TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 184.

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, ET AL., APPELLANTS,

vs.

HOWARD EBY, INSPECTOR IN CHARGE IMMIGRATION SERVICE, U. S. DEPARTMENT OF LABOR, AT CHICAGO, ILLINOIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 3, 1924.

(28,286)

(29,322)

SUPREME COURT OF THE UNITED STATES.

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1 CAPTION.

IN UNITED STATES DISTRICT COURT.

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable George T. Page, U. S. Circuit Judge for the Seventh Judicial Circuit, Holding U. S. Court for the Northern District of Illinois, by assignment, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-two, being one of the days of the regular October Term of said Court, begun Monday, the second day of October, ——, and of our Independence the 147th year.

Present: Honorable George T. Page, Circuit Judge; Robert R. Levy, U. S. Marshal; John H. R. Jamar, Clerk.

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

Be it remembered that heretofore, to-wit: on the 20th day of May, A. D. 1922, there was filed in the Clerk's office of said Court a certain Petition, in words and figures following to-wit:

And on to-wit: the 20th day of May, A. D. 1922, there was filed in the Clerk's office of said court a certain Petition in words and figures following to-wit:

4 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 34101.

UNITED STATES OF AMERICA ex Rel. HERBERT MAHLER

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

PETITION FOR WRIT OF HABEAS CORPUS.

[Filed May 20, 1922.]

The petition of Herbert Mahler, by Otto Christensen, his attorney and next friend, who files this petition at the instance and request of said Herbert Mahler, respectfully shows:

First. Your petitioner is a resident of the City of Chicago, County of Cook, and State of Illinois, in this District.

Second. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States and in the custody of Howard Eby, United States Immigration Inspector in and for the Northern District of Illinois.

Third. The sole claim and sole authority by virtue of which the said Howard Eby, Immigration Inspector, as aforesaid, so restrains and detains your petitioner is a certain paper which purports to be a commitment in writing, for the purpose of conveying him as an alien to New York City and from thence to Canada.

Fourth. Upon information and belief, the said commitment was issued by James J. Davis, Secretary of Labor of the United States in certain proceedings instituted by the Immigration Service of the Department of Labor, to deport your petitioner upon the charge that your petitioner was amenable to deportation under the Act of May 10, 1920, and which said charge against your petitioner is set forth in the warrant of deportation, as follows:

"That he is an alien who, since — has been convicted of a
5 violation of or a conspiracy to violate an act entitled: "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States; to punish espionage and better to enforce the criminal laws of the United States and for other purposes, approved June 15, 1917, or the amendment thereof, approved May 16, 1918, the judgment on such conviction having become final. That he is an alien, who since —, has been convicted of a violation, of or a conspiracy to violate an act entitled: "An act to authorize the President to increase temporarily the military establishments of the United States' approved May 18, 1917, or any amendment thereof or supplement thereto, judgment on such conviction having become final."

Fifth. Your petitioner further shows that the commitment upon which Howard Eby claims the right to convey your petitioner from the City of Chicago, in the States of Illinois, to Canada, above refer-ed to, was issued after an alleged and pretended hearing of the matter by C. H. Paul, United States Immigration Inspector, at Chicago, Illinois, on the 15th day of June, 1921.

Sixth. Your petitioner further shows that at said alleged and pretended hearing certain exhibits, marked "A," "B," and "C," were introduced as evidence; your petitioner further shows that these exhibits, introduced and received in evidence by the said Immigration Inspector, *was* all of the evidence produced against the alien at said alleged and pretended hearing. Attached hereto is a copy of said alleged and pretended hearing, exclusive of the exhibits, offered and received in evidence.

Seventh. Your petitioner further shows that these exhibits were incompetent, irrelevant, and immaterial to establish the charge contained in said warrant of deportation, on the ground that exhibit "A" (the indictment), exhibit "B" (judgment of the District Court), and exhibit "C" (judgment and opinion of the Circuit Court of Appeals), respectively, in their entirety, embrace offences not made the subject of deportation under the act or the charge made in the warrant; but each of these exhibits discloses offences and convictions reversed by the United States Circuit Court of Appeals.

6 Eighth. That the charge made in the warrant as a basis for deportation is now non-existent, in that the Selective Service Act and the Espionage Act, respectively, have been repealed by Congress and there is no such offense now under the Federal Statutes, as described in the warrant, nor were there any such offenses known to law at the time of the issuance of this warrant, for the reason that both of the acts under which the offenses could be commit-ed were repealed prior to the issuance of said warrant and there was nothing for the Immigration Act to feed upon.

Ninth. Your petitioner further shows that the above exhibits and this record disclose that this defendant was not convicted of a "violation or a conspiracy to violate an act entitled 'An act to authorize the President to increase temporarily the Military establishments of the United States,' " as contained in the deportation warrant, but that the offense for which he was convicted was a conspiracy as charged in the third count of the indictment against "Section 37 of the Criminal Code in connection with Section 332 of the Criminal Code, Section 5 of the Act of May 18th, 1917, and Article 58 of the Articles of War and the Act of August 29th, 1916." (Last quotation from indictment, title to count 3, p. 32).

Ten. Your petitioner further shows that the act under which this deportation proceeding is brought was passed on May 10th, 1920, nearly two years after this defendant was convicted; that said immigration law under which these proceedings are conducted is Ex Post Facto in character and these proceedings are in violation of the constitutional rights of the defendant, as specified by Article 1, Paragraph 9, Section 3, of the Constitution of the United States of America.

Eleventh. Your petitioner further shows that the amendment of May 10th, 1920, of the Immigration Act upon which the warrant in this case is based, does not repeal the Section of the General
7 Immigration Act, which makes only offenses, of which an alien is convicted, involving moral turpitude deportable; that the offenses here charged are purely political in character and do not involve any degree of moral turpitude.

Twelfth. Your petitioner further alleges upon information and belief, that in the said deportation proceedings the said Inspector denied to your petitioner a due hearing and denied to your petitioner due process of Law and in said respects and in many other respects, and that there was no evidence adduced before said Immigration Inspector to legally establish that your petitioner was an alien amenable to deportation under the Act of May 10th, 1920.

Thirteenth. Your petitioner further alleges upon information and belief that said procedings before said Inspector were for these and other reasons absolutely void and the said commitment is absolutely void and your petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States and in violation of the statutes of the United States.

Wherefore, Your petitioner prays that a writ of Habeas Corpus may issue, directed to the said Howard Eby, Immigration Inspector, and to each and all of his deputies, to bring and have your petitioner before this Court at a time to be by this Court determined, together with the true cause of the detention of your petitioner, to the end that due inquiry may be had in the premises. That a writ of certiorari may at the same time issue, directed to the said Howard Eby, United States Immigration Inspector for the Northern District of Illinois, directing him to certify to this Court all the proceedings that were had before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said commitment;
and that this Court may proceed in the summary way to
8 determine the facts of this case in that regard and the legality of your petitioner's impairment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at Chicago, Illinois, this 16th day of May, A. D. 1922.

By Herbert Mahler, Petitioner, By Otto Christense-, his attorney & next friend.
Otto Christensen, Atty. for Petitioner.

9 STATE OF ILLINOIS,
County of Cook, ss:

Otto Christensen being first duly sworn on oath states that he is the attorney and next friend of the alien in the foregoing petition; that he has read the foregoing petition by him subscribed and knows the same to be true of his own knowledge.

Otto Christensen.

Subscribed and sworn to before me this 16th day of May, A. D. 1922.

Charles Wolff, Notary Public. (Seal.)

(Here Follows "Report of Hearing" but not copied.)

[File endorsement omitted.]

10 And on to-wit: the 20th day of May, 1922, there was filed in the Clerk's office of said court a certain Petition in words and figures following to-wit:

11 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

34099.

UNITED STATES OF AMERICA ex Rel. JOSEPH A. OATES

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

PETITION FOR WRIT OF HABEAS CORPUS.

[Filed May 20, 1922.]

The petition of John A. Oates, by Otto Christensen, his attorney and next friend, who files this petition at the instances and request of said Joseph A. Oates respectfully shows:

First. Your petitioner is a resident of the City of Chicago, County of Cook, and State of Illinois, in this District.

Second. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States, and in the custody of Howard Eby, United States Immigration Inspector in and for the Northern District of Illinois.

Third. The sole claim and sole authority by virtue of which the said Howard Eby, Immigration Inspector, as aforesaid, so restrains and detains your petitioner is a certain paper which purports to be a commitment in writing, for the purpose of conveying him as an alien to New York City and from thence to England.

Fourth. Upon information and belief, the said commitment was issued by James J. Davis, Secretary of Labor of the United States, instituted by the Immigration Service of the Department of
12 Labor, to deport your petitioner upon the charge that your petitioner was un-mendable to deportation under the act of May 19, 1920, and which said charge against your petitioner is set forth in the warrant of deportation as follows:

"That he is an alien who, since has been convicted of a violation of or a conspiracy to violate an act entitled: "An act to punish acts of interference with the foreign relations the neutrality and the foreign commerce of the United States: to punish espionage and better to enforce the criminal laws of the United States and for other purposes, approved June 15, 1917, or the amendment thereof, approved May 16, 1918 the judgment on such conviction having become final. That he is an alien who since —, has been convicted of a violation of or a conspiracy to violate an act entitled: 'an act to authorize the President to increase temporarily the military establishments of the United States approved May 18, 1917, or any amendment thereof or supplement thereto, judgment on such conviction having become final."

Fifth. Your petitioner further shows that the commitment upon which Howard Eby claims the right to convey your petitioner from the City of Chicago, in the State of Illinois, to England above referred to, was issued after an alleged and pretended hearing of the matter by C. H. Paul, United States Immigration Inspector, at Chicago, Illinois on the 15th day of June, 1921.

Sixth. Your petitioner further shows that at said alleged and pretended hearing certain exhibits marked "A," "B," and "C," were introduced as evidence: your petitioner further shows that these exhibits, introduced and received in evidence by the said Immigration Inspector, was all of the evidence produced against the
13 alien at said alleged and pretended hearing. Attached hereto is a copy of said alleged and pretended hearing exclusive of the exhibits, offered and received in evidence.

Seventh. Your petitioner further shows that these exhibits were incompetent, irrelevant, and immaterial to establish the charge contained in said warrant of deportation, on the ground that exhibit "A" (the indictment), exhibit "B" (judgment of the District Court) and exhibit "C" (judgment and opinion of the Circuit Court of Appeals) respectively, in their entirety, embrace offences not made the subject of deportation under the act or the charge made in the warrant; but each of these exhibits discloses offenses and conviction reversed by the United States Circuit Court of Appeals.

Eighth. That the charge made in the warrant as a basis for deportation is now non-existent, in that the selective service Act and the Espionage Act, respectively have been repealed by Congress and there is no such offense now under the Federal Statutes, as described in the warrant, nor were there any such offenses known to law at the time of the issuance of this warrant, for the reason that both of the acts under which the offenses could be committed were repealed prior to the issuance of this warrant and there was nothing for the Immigration Act to feed upon.

14 Ninth. Your petitioner further shows that the above exhibits and this record disclose that this defendant was not convicted of a "violation or a conspiracy to violate an act entitled "An act to authorize the President to increase temporarily the Military establishments of the United States," as contained in the deportation warrant, but that the offense for which he was convicted

was a conspiracy as charged in the third count of the indictment against "Section 37 of the Criminal Code in connection with Section 332 of the Criminal Cod-, Section 5, of the Act of May 18th, 1917, and Article 58 of the Articles of War and the Act of August 29th, 1916," (Last quotation from indictment, entitled to count 3 p. 32).

Tenth. Your petitioner further shows that the act under which this deportation proceeding is brought was passed on May 10th, 1920 nearly two years after this defendant was convicted; that said immigration law under which these proceedings are conducted is Ex Post Facto in character and these proceedings are in violation of the constitutional rights of the defendant, as specified by Article 1, Paragraph 9, Section 3, of the Constitution of the United States of America.

Eleventh. Your petitioner further shows that the amendment of May 10th, 1920, of the Immigration act upon *3*hich the warrant in this case is based, does not repeal the Section of the General
15 Immigration Act, which makes only offenses, of which an alien is convicted, involving moral turpitude deportable; that the offenses here charged are purely political in character and do not involve any degree of moral turpitude.

Twelfth. Your petitioner further alleges upon information and belief, that in the said deportation proceedings the said inspector denied to your petitioner a due hearing and denied to your petitioner due process of law and in said respects and in many other respects, and that there was no evidence adduced before said Immigration Inspector to legally establish that your petitioner was an alien amenable to deportation under the Act of May 10th, 1920.

Thirteenth. Your petitioner further alleges upon information and belief that said proceedings before said inspector were for these and other reasons absolutely void and the said commitment is absolutely void and your petitioner is now confined and deprived of his liberty in violation of the constitution of the United States and in violation of the statutes of the United States.

Wherefore your petitioner prays that a Writ of Habeas Corpus may issue, directed to the said Howard Eby, Immigration Inspector, and to each and all of his deputies, to bring and have your petitioner before this Court at a time to be by this Court determined, to-
16 gether with the true cause of the detention of your petitioner, to the end that due inquiry may be had in the premises. That a writ of certiorari may at the same time issue, directed to the said Howard Eby, United States Immigration Inspector for the Northern District of Illinois, directing him to certify to this Court all the proceedings that were had before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said commitment, and that this court may proceed in the summary way to determine the facts of this case in that regard and the legality of your petitioner's impairment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at Chicago, Illinois, this 16th day of May, A. D. 1922.
James Oates, Petitioner, By Otto Christensen, His Attorney and Next Friend. Otto Christensen, Attorney for Petitioner.

17 STATE OF ILLINOIS,
County of Cook, ss:

Otto Christensen being first duly sworn on oath states that he is the attorney and next friend of the alien in the foregoing petition: that he has read the foregoing petition by him subscribed and knows the same to be true of his own knowledge.

Otto Christensen.

Subscribed and sworn to before me this 16th day of May, A. D. 1922.

Charles Wolff, Notary Public. (Seal.)

Here follows "Report of Hearing" but not copied.

[File endorsement omitted.]

18 And on to-wit: the 20th day of May, 1922, there was filed in the Clerk's office of said court a certain Petition, in words and figures following to-wit:

19 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

UNITED STATES OF AMERICA ex Rel. PIETRO NIGRA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

PETITION FOR WRIT OF HABEAS CORPUS.

[Filed May 20, 1922.]

The petition of Pietro Nigra, by Otto Christensen his attorney and next friend, who files this petition at the instances and request of said Pietro Nigra, respectfully shows:

First. Your petitioner is a resident of the City of Chicago, County of Cook, and State of Illinois, in this District.

Second. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States, and in the custody of Howard Eby, United States Immigration Inspector, in and for the Northern District of Illinois.

Third. The sole claim and sole authority by virtue of which the said Howard Eby, Immigration Inspector as aforesaid so restrains and detains your petitioner in a certain paper which purports to be a

ommitment in writing, for the purpose of conveying him as an lien to New York City and from thence to Italy.

Fourth. Upon information and belief, the said commitment was issued by James J. Davis, Secretary of Labor of the United States instituted by the Immigration Service of the epartment of Labor, to deport your petitioner upon the charge that our petitioner was *unmenable* to deportation under the act of May 0th, 1920, and which said charge against your petitioner is set rth in the warrant of deportation as follows:

"That he is an alien who, since has been convicted of a violation a conspiracy to violate an act entitled "an act to punish acts of terference with the foreign relations the neutrality and the foreign mmerce of the United States and for other purposes approved ne 15, 1917, or the amendment thereof approved May 16, 1918, e judgment on such conviction having become final. That he is alien who since has been convicted of a violation of or a conracy to violate an act entitled, "an act to authorize the President to crease temporarily the military establishments of the United States, proved May 18, 1917, or any amendment thereof, or supplement ereto judgment on such conviction having become final."

Fifth. Your petitioner further shows that the commitment upon ich Howard Eby claims the right to convey your petitioner from e City of Chicago, in the State of Illinois, to Italy, above referred to, s issued after an alleged and pretended hearing of the matter by H. Paul, United States Immigration Inspector, at Chicago, Illis, on the 15th day of June 1921.

Sixth. Your petitioner further shows that at said alleged and preded hearing certain exhibits marked "A" "B" and "C" were induced as evidence; your petitioner further shows that these exbits, introduced and received in evidence by the said immigran Inspector, was all of the evidence against the al/ien at said alleged and pretended hearing. Attached hereto is *is* a copy of said alleged and pretended hearing exclusive of the exhibits offered and received in evidence.

Seventh. Your petitioner further shows that these exhibits were ompetent, irrevolent and immaterial to establish the charge conged in said warrant of deportation on the ground that exhibit "A" e indictment) exhibit "B" (judgment of the District Court) exhibit "C" (judgment and opinion of the Circuit Court of peals) respectively, in their entirety, embrace offences not made subject of deportation under the act of the charge made in the rant but each of these exhibits discloses offenses and convictions ersed by the United States Circuit Court of Appeals.

Eighth. That the charge made in the warrant as a basis for deation is now non-existent, in that the selective service Act and Espionage Act respectively have been repealed by Congress and re is no such offense under the Federal Statutes now, as described he warrant, nor were there any such offenses known to law at the e of the issuance of this warrant, for the reason that both of the under which the offenses would be committed were repealed

prior to the issuance of this warrant and there was nothing for the Immigration Act to feed upon.

Ninth. Your petitioner further shows that *that* the above exhibits and this record disclose that this defendant was not convicted of a violation or a conspiracy to violate an act entitled "An act to authorize the President to increase temporarily the Military establishments of the United States" as contained in the deportation warrant, but that the offense for which he was convicted was a conspiracy as charged in the third count of the indictment against "Section 332 of the Criminal Code, Section 5, of the Act of May 18th, 1917, and Article 58 of the Articles of War and the Act of August 29th, 1916." (Last quotation from indictment entitled to count 3 p. 32).

Tenth. Your petitioner further shows that the act under which this deportation proceeding is brought was passed on May 10th, 1920, nearly two years after this defendant was convicted, that said Immigration law under which these proceedings are conducted is Ex Post Facto in character and these proceedings are in violation of the constitutional rights of the defendant, as specified by Article 1, Paragraph 9, Section 3, of the Constitution of the United States of America.

Eleventh. Your petitioner further shows that the defendant — of May 10th, 1920, of the Immigration Act upon which the warrant in this case is based, does not repeal the Section of the General Immigration Act, which makes only offenses of which an alien is convicted involving moral turpitude deportable; that the offenses here charged are purely political in character and do not involve any degree of moral turpitude.

Twelfth. Yours petitioner further alleges upon information and belief that in the said deportation proceedings the said inspector denied to your petitioner a due hearing and denied to your petitioner due process of law and in said respects and in many other respects and that there was as evidence adduced before said Immigration Inspector to legally establish that your petitioner was *in* alie*u* amenable to deportation under the act of May 10th, 1920.

Thirteenth. Your petitioner further alleges upon information and belief that said proceedings before said inspector were for these and other reasons absolutely void and the said commitment is absolutely void and your petitioner is now confined and deprived of his liberty in violation of the constitution of the United States and in violation of the Statutes of the United States.

Wherefore your petitioner prays that a Writ of Habeas Corpus may issue, directed to the said Howard Eby, Immigration Inspector, and to each and all of his deputies to bring and have your petitioner before this Court at a time to be by this Court determined together with the true cause of the detention of your petitioner to the end that due inquiry may be had in the premises. That a writ of certiorari may at the same time issue, directed to the said Howard Eby, United States Immigration Inspector for the Northern District of Illinois directing him to certify to this Court all

proceedings that were had before him and all the evidence that offered before him in said proceedings which resulted in the e of said commitment, and that this court may proceed in the mmary way to determine the facts of this case in that regard and legality of your petitioner impairment, restraint, and detention thereupon to dispose of your petitioner as law and justice may uire.

nd your petitioner will ever pray.

ated at Chicago, Illinois, this 19th day of May, A. D. 1922.

Pietro Nigra, Petitioner, By His Atty. & Next Friend, Otto Christensen. Otto Christensen, Attorney for Petitioner.

STATE OF ILLINOIS,
County of Cook, ss:

tto Christensen being first duly sworn on oath states that he is ttorney and next friend of the alien in the foregoing petition; he has read the foregoing petition by him subscribed and knows ame to be true of his own knowledge.

Otto Christensen.

bscribed and sworn to before me this 19th day of May, A. D.

Henry Bloch, Notary Public. (Seal.)

re follows "report of hearing" but not copied.

ile endorsement omitted.]

And on to wit: the 20th day of May, 1922, there was filed in the Clerk's office of said court a certain Petition, in words igures following to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

UNITED STATES OF AMERICA ex Rel. JOHN AVILLA

vs.

ARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

PETITION FOR WRIT OF HABEAS CORPUS.

[Filed May 20, 1922.]

petition of John Avilla by Otto Christensen, his attorney and riend, who files this petition at the instance and request of said Avilla, respectfully shows:

t. Your petitioner is a resident of the City of Chicago, County k, and State of Illinois, in this District.

Second. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States and in the custody of Howard Eby, United States Immigration Inspector in and for the Northern District of Illinois.

Third. The sole claim and sole authority by virtue of which the said Howard Eby, Immigration Inspector, as aforesaid, so restrains and detains your petitioner is a certain paper which purports to be a commitment in writing, for the purpose of conveying him as alien to New York City and from thence to Portugal.

Fourth. Upon information and belief, the said commitment was issued by James J. Davis Secy. of Labor of the United States in certain proceedings instituted by the Immigration Service of the Department of Labor, to deport your petitioner upon the charge that your petitioner was amenable to deportation under the Act of May 10, 1920, and which said charge against your petitioner is set forth *in* in the warrant of deportation, as follows:

28 "That he is an alien who, since has been convicted of a violation of or a conspiracy to violate an act entitled: 'An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States; to punish espionage and better to enforce the criminal laws of the United States and for other purposes,' approved June 15, 1917, or the amendment thereof, approved May 16, 1918, the judgment on such conviction having become final. That he is an alien, who since —— —, ——, has been convicted of a violation of or a conspiracy to violate an act entitled: 'An act to authorize the President to increase temporarily the military establishments of the United States' approved May 18, 1917, or any amendment thereof or supplement thereto, judgment on such conviction having become final."

Fifth. Your petitioner further shows that the commitment upon which Howard Eby claims the right to convey your petitioner from the City of Chicago, in the State of Illinois, to Portugal, above referred to, was issued after an alleged and pretended hearing of the matter by C. H. Paul, United States Immigration Inspector, at Chicago, Illinois, on the 15th day of June, 1921.

Sixth. Your petitioner further shows that at said alleged and pretended hearing certain exhibits, marked "A," "B," and "C," were introduced as evidence; your petitioner further shows that these exhibits, introduced and received in evidence by the said Immigration Inspector, was all of the evidence produced against the alien at said alleged and pretended hearing. Attached hereto is a copy of said alleged and pretended hearing, exclusive of the exhibits, offered and received in evidence.

Seventh. Your petitioner further shows that these exhibits were incompetent, irrelevant, and immaterial to establish the charge contained in said warrant of deportation, on the ground that exhibit "A" (the indictment), exhibit "B" (judgment of the District Court), and exhibit "C" (judgment and opinion of the Circuit Court of Appeals), respectively, in their entirety, embrace offences not made the subject

of deportation under the act or the charge made in the warrant; but each of these exhibits discloses offences and convictions reversed by the United States Circuit Court of Appeals.

Eighth. That the charge made in the warrant as a basis for deportation is now non-existent, in that the Selective Service Act and the Espionage Act, respectively, have been repealed by Congress and there is no such offense now under the Federal Statutes, as described in the warrant, nor were there any such offenses known to law at the time of the issuance of this warrant, for the reason that both of the acts under which the offenses could be committed were repealed prior to the issuance of said warrant and there was nothing for the Immigration Act to feed upon.

Ninth. Your petitioner further shows that the above exhibits and his record disclose that this defendant was not convicted of a "violation or a conspiracy to violate an act entitled 'An act to authorize the President to increase temporarily the Military establishments of the United States,'" as contained in the deportation warrant, but that the offense for which he was convicted was a conspiracy as charged in the third count of the indictment against "Section 37 of the Criminal Code in connection with Section 332 of the Criminal Code, Section 5 of the Act of May 18th, 1917, and Article 58 of the Articles of War and the Act of August 20th, 1916." (Last quotation from indictment, title to count 3, p. 32.)

Tenth. Your petitioner further shows that the act under which his deportation proceeding is brought was passed on May 10th, 1920, nearly two years after this defendant was convicted; that said immigration law under which these proceedings are conducted is Ex Post Facto in character and these proceedings are in violation of the constitutional rights of the defendant, as specified by Article 1, Paragraph 9, Section 3, of the Constitution of the United States of America.

Eleventh. Your petitioner further shows that the amendment of May 10th, 1920, of the Immigration Act upon which the warrant in this case is based, does not repeal the Section of the General Immigration Act, which makes only offenses, of which an alien is convicted, involving moral turpitude deportable; that the offenses here charged are purely political in character and do not involve any degree of moral turpitude.

Twelfth. Your petitioner further alleges upon information and belief, that in the said deportation proceedings the said Inspector denied your petitioner a due hearing and denied to your petitioner due process of law and in said respects and in many other respects, and that there was no evidence adduced before said Immigration Inspector to legally establish that your petitioner was an alien amenable to deportation under the Act of May 10th, 1920.

Thirteenth. Your petitioner further alleges upon information and belief that said proceedings before said Inspector were for these and other reasons absolutely void and the said commitment is absolutely void and your petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States and in violation of the statutes of the United States.

Wherefore, Your petitioner prays that a writ of Habeas Corpus may issue, directed to the said Howard Eby, Immigration Inspector, and to each and all of his deputies, to bring and have your petitioner before this Court at a time to be by this Court determined, together with the true cause of the detention of your petitioner, to the end that due inquiry may be had in the premises. That a writ of certiorari may at the same time issue, directed to the said Howard Eby, United States Immigration Inspector for the Northern District of Illinois, directing him to certify to this Court all the proceedings that were had before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said com-
31 mitment; and that this Court may proceed in the summary way to determine the facts of this case in that regard and the legality of your petitioner's impairment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at Chicago, Illinois, this 16th day of May A. D. 1922.

John Avilla, Petitioner, By Otto Christensen, His Attorney and Next Friend. Otto Christensen, Attorney for Petitioner.

32 STATE OF ILLINOIS,
County of Cook, ss:

Otto Christensen being first duly sworn on oath states that he is the attorney and next friend of the alien in the foregoing petition; that he has read the foregoing petition by him subscribed and knows the same to be true of his own knowledge.

Otto Christensen.

Subscribed and sworn to before me this 16th day of May, A. D. 1922.

Charles Wolff, Notary Public.

Here Follows "Report of Hearing" but not copied.

[File endorsement omitted.]

33 And on to-wit: the 20th day of May, 1922, there was filed in the Clerk's office of said court a certain Petition in words and figures following to-wit:

34 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 34101.

UNITED STATES OF AMERICA ex Rel. WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

PETITION FOR WRIT OF HABEAS CORPUS.

[Filed May 20, 1922.]

The petition of William Moran, by Otto Christensen, his attorney and next friend, who files this petition at the instance and request of said Herbert Mahler, respectfully shows:

First. Your petitioner is a resident of the City of Chicago, County of Cook, and State of Illinois, in this District.

Second. Your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States and in the custody of Howard Eby, United States Immigration Inspector in and for the Northern District of Illinois.

Third. The sole claim and sole authority by virtue of which the said Howard Eby, Immigration Inspector, as aforesaid, so restrains and detains your petitioner is a certain paper which purports to be a commitment in writing, for the purpose of conveying him as an alien to New York City and from thence to Australia.

Fourth. Upon information and belief, the said commitment was issued by James J. Davis, Secretary of Labor of the United States in certain proceedings instituted by the Immigration Service of the Department of Labor, to deport your petitioner upon the charge that your petitioner was amenable to deportation under the Act of May 10, 1920, and which said charge against your petitioner is set forth in the warrant of deportation, as follows:

35 "That he is an alien who, since — has been convicted of a violation of or a conspiracy to violate an act entitled: "An act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States; to punish espionage and better to enforce the criminal laws of the United States and for other purposes, approved June 15, 1917, or the amendment thereof, approved May 18, 1918, the judgment on such conviction having become final. That he is an alien, who since —, has been convicted of a violation, of or a conspiracy to violate an act entitled: "An act to authorize the President to increase temporarily the military establishments of the United States' approved May 18, 1917, or any amendment thereof or supplement thereto, judgment on such conviction having become final."

Fifth. Your petitioner further shows that the commitment upon which Howard Eby claims the right to convey your petitioner from the City of Chicago, in the States of Illinois, to *Canada*, above referred to, was issued after an alleged and pretended hearing of the matter by C. H. Paul, United States Immigration Inspector, at Chicago, Illinois, on the 15th day of June, 1921.

Sixth. Your petitioner further shows that at said alleged and pretended hearing certain exhibits, marked "A," "B," and "C," were introduced as evidence; your petitioner further shows that these exhibits, introduced and received in evidence by the said Immigration Inspector, *was* all of the evidence produced against the alien at said alleged and pretended hearing. Attached hereto is a copy of said alleged and pretended hearing, exclusive of the exhibits, offered and received in evidence.

Seventh. Your petitioner further shows that these exhibits were incompetent, irrelevant, and immaterial to establish the charge contained in said warrant of deportation, on the ground that exhibit "A" (the indictment), exhibit "B" (judgment of the District Court), and exhibit "C" (judgment and opinion of the Circuit Court of Appeals), respectively, in their entirety, embrace offences not made the subject of deportation under the act or the charge made in the warrant; but each of these exhibits discloses offences and convictions reversed by the United States Circuit Court of Appeals.

36 Eighth. That the charge made in the warrant as a basis for deportation is now non-existent, in that the Selective Service Act and the Espionage Act, respectively, have been repealed by Congress and there is no such offense now under the Federal Statutes, as described in the warrant, nor were there any such offenses known to law at the time of the issuance of this warrant, for the reason that both of the acts under which the offenses could be commit-ed were repealed prior to the issuance of said warrant and there was nothing for the Immigration Act to feed upon.

Ninth. Your petitioner further shows that the above exhibits and this record disclose that this defendant was not convicted of a "violation or a conspiracy to violate an act entitled 'An act to authorize the President to increase temporarily the Military establishments of the United States,'" as contained in the deportation warrant, but that the offense for which he was convicted was a conspiracy as charged in the third count of the indictment against "Section 37 of the Criminal Code in connection with Section 332 of the Criminal Code, Section 5 of the Act of May 18th, 1917, and Article 58 of the Articles of War and the Act of August 29th, 1916." (Last quotation from indictment, title to count 3, p. 32.)

Tenth. Your petitioner further shows that the act under which this deportation proceeding is brought was passed on May 10th, 1920, nearly two years after this defendant was convicted; that said immigration law under which these proceedings are conducted is Ex Post Facto in character and these proceedings are in violation of the Constitutional rights of the defendant, as specified by Article 1, Paragraph 9, Section 3, of the Constitution of the United States of America.

Eleventh. Your petitioner further shows that the amendment of May 10th, 1920, of the Immigration Act upon which the warrant in this case is based, does not repeal the Section of the General
37 Immigration Act, which makes only offenses, of which an alien is convicted, involving moral turpitude deportable; that the offenses here charged are purely political in character and do not involve any degree of moral turpitude.

Twelfth. Your petitioner further alleges upon information and belief, that in the said deportation proceedings the said Inspector denied to your petitioner a due hearing and denied to your petitioner due process of law and in said respects and in many other respects, and that there was no evidence adducted before said Immigration Inspector to legally establish that your petitioner was an alien amenable to deportation under the Act of May 10th, 1920.

Thirteenth. Your petitioner further alleges upon information and belief that said proceedings before said Inspector were for these and other reasons absolutely void and the said commitment is absolutely void and your petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States and in violation of the statutes of the United States.

Wherefore, Your petitioner prays that a writ of Habeas Corpus may issue, directed to the said Howard Eby, Immigration Inspector, and to each and all of his deputies, to bring and have your petitioner before this Court at a time to be by this Court determined, together with the true cause of the detention of your petitioner, to the end that due inquiry may be had in the premises. That a writ of certiorari may at the same time issue, directed to the said Howard Eby, United States Immigration Inspector for the Northern District of Illinois, directing him to certify to this Court all the proceedings that were had before him and all the evidence that was offered before him in said proceedings, which resulted in the issue of said commitment; and that this Court may proceed in the summary way to determine the facts of this case in that regard
38 and the legality of your petitioner's impairment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at Chicago, Illinois, this 14th day of June, A. D. 1922.

William Moran, Petitioner, By Otto Christensen, his attorney & next friend.
Otto Christensen, Atty. for Petitioner.

39 STATE OF ILLINOIS,
County of Cook, ss:

Otto Christensen being first duly sworn on oath states that he is the attorney and next friend of the alien in the foregoing petition; that he has read the foregoing petition by him subscribed and know the same to be true of his own knowledge.

Otto Christensen.

Subscribed and sworn to before me this 14th day of June, A. D. 1922.

Henry Glech, Notary Public. (Seal.)

Here follows "Report of Hearing" but not copied.

[File endorsement omitted.]

40 And afterwards on, to wit, the 20th day of May, 1922, this matter coming on to be heard, the following order was entered by the Court:

41 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Saturday, May 20, 1922.

Present: Honorable George T. Page, Circuit Judge.

No. 34101.

UNITED STATES OF AMERICA ex Rel. HERBERT MAHLER

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

ORDER ALLOWING WRIT OF HABEAS CORPUS.

Now comes the petitioner, by his attorney, and upon motion, it is ordered by the Court that a Writ of Habeas Corpus be issued, returnable forthwith, and that the relator be released upon bond in the sum of One Thousand Dollars, $1,000), with surety to be approved by the Court.

And it is further ordered that the above entitled cause be set down for hearing at ten o'clock, A. M. on June twenty-sixth, 1922.

42 And afterwards on, to wit, the 20th day of May, 1922, this matter coming on to be heard, the following order was entered by the Court:

43 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Saturday, May 20, 1922.

Present: Honorable George T. Page, Circuit Judge.

No. 34099.

UNITED STATES OF AMERICA ex Rel. JOSEPH A. OATES

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S.

ORDER ALLOWING WRIT OF HABEAS CORPUS.

Now comes the petitioner, by his attorney, and upon motion, it is ordered by the Court that a Writ of Habeas Corpus be issued, returnable forthwith, and that the relator be released upon bond in the sum of One Thousand Dollars, ($1,000), with surety to be approved by the Court.

And it is further ordered that the above entitled cause be set down for hearing at ten o'clock, A. M. on June 26th, 1922.

44 And afterwards on, to wit, the 20th day of May, 1922, this matter coming on to be heard, the following order was entered by the Court:

45 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Saturday, May 20, 1922.

Present: Honorable George T. Page, Circuit Judge.

No. 34100.

UNITED STATES OF AMERICA ex Rel. PIETRO NIGRA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

ORDER ALLOWING WRIT OF HABEAS CORPUS.

Now comes the petitioner, by his attorney, and upon motion, it ordered by the Court that a Writ of Habeas Corpus be issued, urnable forthwith, and that the relator be released upon bond in e sum of One Thousand Dollars, ($1,000), with surety to be proved by the Court.

And it is further ordered that the above entitled cause be s
down for hearing at ten o'clock, A. M. on June 26th, 192
46 And afterwards on, to wit, the 20th day of May, 1922, th
matter coming on to be heard, the following order was entere
by the Court:

47 In the District Court of the United States for the Norther
District of Illinois, Eastern Division.

Saturday, May 20, 1922.

Present: Honorable George T. Page, Circuit Judge.

No. 34102.

UNITED STATES OF AMERICA ex Rel. JOHN AVILLA

vs.

HOWARD EBY, etc.

ORDER ALLOWING WRIT OF HABEAS CORPUS.

Now comes the petitioner, by his Attorney, and upon motion it
ordered by the Court that a Writ of Habeas Corpus be issued, r
turnable forthwith, and that the relator be released upon bond
the sum of One Thousand Dollars, ($1,000), with surety to
approved by the Court.

And it is further ordered that the above entitled cause be set dow
for hearing at ten o'clock, A. M. on June 26th, 1922.

48 On the same day, to-wit the 20th day of May, 1922, a Wr
of Habeas Corpus issued out of the Clerk's office of said Cou
against said defendant in said above entitled cause, which said wr
with the return of the Marshal thereon endorsed is in the wor
and figures following, to-wit:

49 WRIT OF HABEAS CORPUS.

[Filed May 29, 1922.]

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

District Court of the United States of America.

The United States of America to Howard Ely, Inspector in Charg
of Chicago Immigration Department, U. S. Department of Labo
Greeting:

You are hereby commanded to have the body of Herbert Mahle
by you imprisoned and detained, as it is said, together with the tim
and cause of such imprisonment and detention, by whatsoever nam

said Herbert Mahler shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, immediately after being served with this writ, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. George T. Page, Judge of said Court, at Chicago, aforesaid, this 20th day of May, in the year of our Lord one thousand nine hundred and 22, and of our Independence the 146th.

John H. R. Jamar, Clerk. (Seal.)

50 I have executed this writ within my District in the following manner to wit: Upon the within named —— ——, by reading the same to and within his presence and hearing at Chicago, Illinois, this 20th day of May, A. D. 1922.

Robert R. Levy, U. S. Marshal, By Andrew Olsen, Deputy.

Marshal's Fees: 1 Service, 2.00; Miles, —.

[File endorsement omitted.]

51 On the same day, to wit: the 20th day of May, 1922, a Writ of Habeas Corpus issued out of the Clerk's office of said Court against said defendant in said above entitled cause, which said writ with the return of the Marshal thereon endorsed is in the words and figures following, to-wit:

52 WRIT OF HABEAS CORPUS.

[Filed May 29, 1922.]

NORTHERN DISTRICT OF ILLINOIS,
Eastern Divison, ss:

District Court of the United States of America.

The United States of America to Howard Ely, Inspector in Charge of Chicago Immigration Department, U. S. Department of Labor, Greeting:

You are hereby commanded to have the body of Joseph A. Oates, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Joseph A. Oates shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms

of our said District Court, Federal Building, in the City of Chicago, in said District, immediately after being served with this writ, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. George T. Page, Judge of said Court, at Chicago, aforesaid, this 20th day of May in the year of our Lord one thousand nine hundred and 22, and our our Independence the 146th.

John H. R. Jamar, Clerk. (Seal.)

I have executed this writ within my District in the following manner to wit: Upon the within named Leo B. Russell, Immigration Inspector, by reading the same to and within his presence and hearing at Chicago, Illinois, this 20th day of May, A. D. 1922.

Robert R. Levy, U. S. Marshal, By Andrew Olsen, Deputy.

Marshal's Fees: 1 Service, 2.00; Miles, —.

[File endorsement omitted.]

53 On the same day, to-wit: the 20th day of May, 1922, a Writ of Habeas Corpus issued out of the Clerk's office of said Court against said defendant in said above entitled cause, which said writ with the return of the Marshal thereon endorsed is in the words and figures following, to-wit:

54 WRIT OF HABEAS CORPUS.

[Filed May 29, 1922.]

NORTHERN DISTRICT OF ILLINOIS,
Eastern Divison, ss:

District Court of the United States of America.

The United States of America to Howard Ely, Inspector in Charge of Chicago Immigration Department, U. S. Department of Labor, Greeting:

You are hereby commanded to have the body of Pietro Nigra, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Petro Nigra shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, immediately after being served with this writ, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. George T. Page, Judge of said Court, at Chicago, aforesaid, this 20th day of May, in the year of our Lord one thousand nine hundred and 22, and of our Independence the 146th.

John H. R. Jamar, Clerk. (Seal.)

I have executed this writ within my District in the following manner to wit: Upon the within named Leo B. Russell, Immigration Inspector, by reading the same to and within his presence and hearing at Chicago, Illinois, this 20th day of May, A. D. 1922.

Robert R. Levy, U. S. Marshal, By Andrew Olsen, Deputy.

Marshal's Fees: 1 Service, 2.00; Miles, —.

[File endorsement omitted.]

5 On the same day, to-wit: the 20th day of May, 1922, a Writ of Habeas Corpus issued out of the Clerk's office of said Court against said defendant in said above entitled cause, which said writ with the return of the Marshal thereon endorsed is in the words and figures following, to-wit:

6 WRIT OF HABEAS CORPUS.

[Filed May 29, 1922.]

NORTHERN DISTRICT OF ILLINOIS,
Eastern Divison, ss:

District Court of the United States of America.

The United States of America to Howard Ely, Inspector in Charge of Chicago Immigration Department, U. S. Department of Labor, Greeting:

You are hereby commanded to have the body of John Avilla, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said John Avilla, shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, immediately after being served with this writ, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. George T. Page, Judge of said Court, at Chicago, aforesaid, this 20th day of May, in the year of our Lord one thousand nine hundred and 22, and of our Independence the 146th.

(Seal.) John H. R. Jamar, Clerk. —— ——, Deputy, Clerk.

I have exected this writ within my District in the following manner to wit: Upon the within named Leo B. Russell, Immigration Inspector, by reading the same to and within his presence and hearing at Chicago, Illinois, this 20th day of May, A. D. 1922.

Robert R. Levy, U. S. Marshal, By Andrew Olsen, Deputy.

Marshal's Fees: 1 Service, 2.00; Miles, —.

[File endorsement omitted.]

57 On the same day, to-wit: the 17th day of June 1922, a Writ of Habeas Corpus issued out of the Clerk's office of said Court against said defendant in said above entitled cause, which said writ with the return of the Marshal thereon endorsed is in the words and figures following, to-wit:

58 WRIT OF HABEAS CORPUS.

[Filed June 26, 1922.]

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

District Court of the United States of America.

The United States of America to Howard Ely, Inspector in Charge of Chicago Immigration Department, U. S. Department of Labor. Greeting:

You are hereby commanded to have the body of William Moran, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said William Moran shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, immediately after being served with this writ, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness the Hon. George A. Carpenter, Judge of said Court, at Chicago, aforesaid, this 17th day of June, in the year of our Lord one thousand nine hundred and 22, and of our Independence the 146th.

(Seal.) John H. R. Jamar, Clerk. —— ——, Deputy Clerk.

Marshal's Return.

have executed this writ, within my district, in the following ner to-wit. Upon the within named Howard Ely, by delivering n a true copy hereof, he waiving the reading of the same. ted at Chicago, Illinois, this 17th day of June, A. D. 1922.

Robert R. Burns, U. S. Marshal. T. C. Smith, Deputy Marshal.

Service, 2.00; No Mileage; Total, 2.00.

ile endorsement omitted.]

And afterwards on, to wit, the 17th day of June, 1922, this matter coming on to be heard, the following order was ed by the Court:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Saturday, June 17, 1922.

sent: Honorable Samuel Alschuler, Circuit Judge.

No. 34125.

UNITED STATES OF AMERICA ex Rel. WILLIAM MORAN

vs.

RD EBY, Inspector in Charge Chicago Immigration Department, U. S. Department of Labor.

ORDER ALLOWING WRIT OF HABEAS CORPUS.

comes the petitioner, by his attorney, and upon motion, it is d by the Court that a Writ of Habeas Corpus be issued, returnorthwith, and that the relator be released upon bond in the One Thousand Dollars, ($1,000), with surety to be approved Court.

it is further ordered that the above entitled cause be set down aring at ten o'clock A. M. on June twenty-sixth, 1922.

And afterwards on, to wit, the 1st day of November, 1922, this matter coming on to be heard, the following order was by the Court:

62 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Wednesday, November 1, 1922.

Present: Honorable George T. Page, Circuit Judge.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

ORDER CONSOLIDATING CAUSES AND DISSMISSING WRITS OF HABEAS CORPUS.

Upon agreement of the parties hereto, by their Attorneys, in open Court, it is ordered by the Court that the cases of Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran be and they are hereby consolidated.

And now this consolidated cause comes on this day to be heard upon the Petition for Writ of Habeas Corpus, Return of Respondent and evidence adduced and after hearing arguments of counsel the Court having considered and being now fully advised in the premises,

It is ordered, adjudged and decreed that the petitions for Habeas Corpus and each of them be dismissed, and that said petitioners, and each of them, be and they are hereby remanded to the custody of the respondent herein, Howard Eby, to be dealt with in accordance with the warrant of deportation, to which order of the Court the petitioners by their counsel then and there duly excepted.

62½ And on, to wit, the 4th day of November, 1922, came Herbert Mahler by his attorney and filed in the Clerk's office of said Court a certain petition in words and figures following, to wit:

62¾ UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

In the Matter of

HERBERT MAHLER

vs.

HOWARD EBY, Inspector in charge Chicago Immigration Service, United States Department of Labor.

PETITION FOR APPEAL.

[Filed Nov. 4, 1922.]

To the Hon. George Page, Judge of the District Court of the United States, Northern District of Illinois, Eastern Division:

Your petitioner, Herbert Mahler, by Otto Christensen, his attorney, respectfully represents that on the first day of November, A. D. 1922 at the regular October Term, 1922, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final decision or judgment was entered in said Court dismissing his petition for habeas corpus and remanding him in custody of Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, for deportation, and

Your petitioner shows that in said decision, judgment and the proceedings had in this cause lately pending, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear in the Assignment of Errors which is filed in this Court by your petitioner together with this petition.

Your petitioner further shows that Section 238 of the Judicial Code (36 Statute at Large 1157), provides "Appeals and Writs of Error may be taken from the District Courts * * * in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States * * * is drawn in question.

Wherefore, your petitioner, the said Herbert Mahler, prays that an appeal may be allowed him from said judgment to the Supreme Court of the United States and that said appeal may be made a supersedeas upon the filing of a bond to be fixed by the Court; that the petitioner may be admitted to bail pending the determination of the appeal in said Court.

Your petitioner further prays that a citation in due form of law issue requiring said Howard Eby, United States Immigrant Inspector in Charge, Chicago, the respondent in said appeal, to be and appear in the United States Supreme Court and then and there to make

answer to the Assignment of Errors made by your petitioner upon the record in the proceedings in said cause; and the said petitioner herewith presents his Assignment of Errors in accordance with the rules of said United States Court and the course of practice in this honorable Court.

Your petitioner further shows that similar decisions and judgments were entered by this Court dismissing the petitions for habeas corpus of John Avilla, Joseph Oates, Pietro Nigra, and William Moran, and remanding them to the custody of Howard Eby, Inspector of Immigration in Charge at Chicago, United States Department of Labor, the hearings on which said petitions of habeas corpus were by
65 order of Court on November 1, 1922, consolidated with the petition of habeas corpus of this petitioner; that one Bill of Exceptions will be filled in said District Court in said cause on behalf of your petitioner and the said persons with whom your petitioner's case was consolidated; that each of said persons with whom your petitioner's case was consolidated has filed in said Court in said cause in his own behalf, an Assignment of Errors together with a Petition for Appeal in said District Court to the Supreme Court of the United States; and that each of said persons with whom your petitioner's case has been consolidated, in the Assignment of Errors and Petition for Appeal so filed by him as aforesaid, prays that the judgment entered against him in said District Court may also be reversed and that he be ordered discharged by said Supreme Court of the United States; and that each of such Assignment of Error so filed in said District Court is substantially a duplicate of the Assignment of Errors herein filed in behalf of your petitioner.

Wherefore, your petitioner respectfully prays that an order may be entered in his behalf authorizing and directing the presentation of a single true copy of the record in the above entitled cause, said Bill of Exceptions, said several Assignments of Error, filed in said District Court in this cause, and of the proceedings in said District Court in the above entitled cause necessary to the hearing in said Supreme Court of the United States on said appeal, directly to the
66 Supreme Court of the United States as by law provided, and that the Clerk of this Court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and speedy justice done in the premises.

Herbert Mahler. Otto Chirstensen, Attorney for Petitioner.

[File endorsement omitted.]

67 And on, to wit, the 4th day of November, 1922, came the petitioner, Joseph Oates, by his attorney and filed in the Clerk's office of said Court a certain Petition, in words and figures following, to wit:

38 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

n the District Court of the United States, October Term, A. D. 1922.

34099.

In the Matter of

JOSEPH OATES

vs.

IOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

PETITION FOR APPEAL.

[Filed Nov. 4, 1922.]

o the Hon. George Page, Judge of the District Court of the United States, Northern District of Illinois, Eastern Division:

Your petitioner, Joseph Oates, by Otto Christensen, his attorney, spectfully represents that on the first day of November, A. D. 1922 the regular October Term, 1922, of said District Court of the nited States for the Northern District of Illinois, Eastern Division ereof, a final decision or judgment was entered in said Court dissing his petition for habeas corpus and remanding him in custody Howard Eby, Inspector in Charge, Chicago Immigration Service, nited States Department of Labor, for deportation, and

Your petitioner shows that in said decision, judgment and the oceedings had in this cause lately pending, certain errors were mmitted to the prejudice of your petitioner, all of which will more detail appear in the Assignment of Errors, which is filed in this Court by your petitioner together with this petition.

Your petitioner further shows that Section 238 of the Judicial Code (36 Statute at Large 1157), provides "Appeals d writs of Error may be taken from the District Courts * * * any case that involves the construction or application of the contution of the United States; in any case in which the constitutionty of any law of the United States * * * is drawn in question.

Wherefore, your petitioner, the said Joseph Oates, prays that an appeal may be allowed him from said judgment to e Supreme Court of the United States and that said appeal may be ade a supersedeas upon the filing of a bond to be fixed by the court; at the petitioner may be admitted to bail pending the determination the appeal in said Court.

Your petitioner further prays that a citation in due form of law ue requiring said Howard Eby, United States Immigrant Inspector

in Charge, Chicago, the respondent in said appeal, to be and appear in the United States Supreme Court and then and there to make answer to the Assignment of Errors made by your petitioner upon the record in the proceedings in said cause; and the said petitioner herewith presents his Assignment of Errors in accordance with the rules of said United States Supreme Court and the course of practice in this honorable Court.

Your petitioner further shows that similar decisions and judgments were entered by this Court dismissing the petitions for habeas corpus of Herbert Mahler, John Avilla, Pietro Nigra, and William Moran, and remanding them to the costody of Howard Eby, Inspector of Immigration in Charge at Chicago, United States Department of Labor, the hearings on which said petitions of habeas corpus were by order of Court on November 1, 1922, consolidated with
71 the petition of habeas corpus of this petitioner; that one Bill of Exceptions will be filed in said District Court in said cause on behalf of your petitioner and the said persons with whom your petitioner's case was consolidated; that each of said persons with whom your petitioner's case was consolidated has filed in said Court in said cause in his own behalf, an Assignment of Errors together with a Petition for Appeal in said District Court to the Supreme Court of the United States and that each of said persons with whom your petitioner's case has been consolidated, in the Assignment of Errors and Petition for Appeal so filed by him as aforesaid, prays that the judgment entered against him in said District Court may also be reversed and that he be ordered discharged by said Supreme Court of the United States; and that each of such Assignment of Errors so filed in said District Court is substantially a duplicate of the Assignment of Errors herein filed in behalf of your petitioner.

Wherefore, your petitioner respectfully prays that an order may be entered in his behalf authorizing and directing the presentation of a single true copy of the record in the above entitled cause, said Bill of Exceptions, said several Assignments of Error, filed in said District Court in this cause, and of the proceedings in said District Court in the above entitled cause necessary to the hearing in said Supreme Court of the United States on said appeal, directly
72 to the Supreme Court of the United States as by law provided, and that the Clerk of this Court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and speedy justice done in the premises.

Joseph Oates, Otto Christensen, Attorney for Petitioner.

[File endorsement omitted.]

73 And on, to wit, the 4th day of November, 1922, came the petitioner, Pietro Nigra, by his attorney and filed in the Clerk's office of said Court a certain Petition, in words and figures following, to wit:

74 UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

34100.

In the Matter of

PIETRO NIGRA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

PETITION FOR APPEAL.

[Filed Nov. 4, 1922.]

To the Hon. George Page, Judge of the District Court of the United States, Northern District of Illinois, Eastern Division:

Your petitioner, Pietro Nigra, by Otto Christensen, his attorney, respectfully represents that on the first day of November, A. D. 1922 at the regular October Term, 1922, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final decision or judgment was entered in said Court dismissing his petition for habeas corpus and remanding him in custody of Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, for deportation, and

Your petitioner shows that in said decision, judgment and the proceedings had in this cause lately pending, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear in the Assignment of Errors which is filed in this court by your petitioner together with this petition.

75 Your petitioner further shows that Section 238 of the Judicial Code (36 Statute at Large 1157), provides "Appeals and Writs of Error may be taken from the District Courts * * * in any case that involves the construction or application of the Constitution of the United States; in any case in which the Constitutionality of any law of the United States * * * is drawn in question.

76 Wherefore, your petitioner, the said Pietro Nigra, prays that an appeal may be allowed him from said judgment to the Supreme Court of the United States and that said appeal may be made a supersedeas upon the filing of a bond to be fixed by the Court; that the petitioner may be admitted to bail pending the determination of the appeal in said Court.

Your petitioner further prays that a citation in due form of law issue requiring said Howard Eby, United States Immigrant Inspector

in Charge, Chicago, the respondent in said appeal, to be and appear in the United States Supreme Court and then and there to make answer to the Assignment of Errors made by your petitioner upon the record in the proceedings in said cause; and the said petitioner herewith presents his Assignment of Errors in accordance with the rules of said United States Supreme Court and the course of practice in this honorable Court.

Your petitioner further shows that similar decisions and judgments were entered by this Court dismissing the petitions for habeas corpus of Herbert Mahler, John Avilla, Joseph Oates and William Moran, and remanding them to the custody of Howard Eby, Inspector of Immigration in Charge at Chicago, United States Department of Labor, the hearings on which said petitions of habeas
77 corpus were by order of Court on November 1, 1922, consolidated with the petition of habeas corpus of this petitioner; that one Bill of Exceptions will be filed in said District Court in said cause on behalf of your petitioner and the said persons with whom your petitioner's case was consolidated; that each of said persons with whom your petitioner's case was consolidated has filed in said Court in said cause in his own behalf, an Assignment of Errors together with a Petition for Appeal in said District Court to the Supreme Court of the United States; and that each of said persons with whom your petitioner's case has been consolidated, in the Assignment of Errors and Petition for Appeal so filed by him as aforesaid, prays that the judgment entered against him in said District Court may also be reversed and that he be ordered discharged by said Supreme Court of the United States; and that each of such Assignment of Error so filed in said District Court is substantially a duplicate of the Assignment of Errors herein filed in behalf of your petitioner.

Wherefore, your petitioner respectfully prays that an order may be entered in his behalf authorizing and directing the presentation of a single true copy of the record in the above entitled cause, said Bill of Exceptions, said several Assignments of Error, filed in said District Court in this cause, and of the proceedings in said District Court in the above entitled cause necessary to the hearing in said Supreme Court of the United States on said appeal, directly
78 to the Supreme Court of the United States as by law provided, and that the Clerk of this Court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and speedy justice done in the premises.

Pietro Nigra. Otto Christensen, Attorney for Petitioner.

[File endorsement omitted.]

79 And on, to-wit, the 4th day of November, 1922, came John Avilla by his attorney and filed in the Clerk's office of said Court a certain Petition in words and figures following, to-wit:

80 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

34102.

In the Matter of JOHN AVILLA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

PETITION FOR APPEAL.

[Filed Nov. 4, 1922.]

To the Hon. George Page, Judge of the District Court of the United States, Northern District of Illinois, Eastern Division:

Your petitioner, John Avilla, by Otto Christensen, his attorney, respectfully represents that on the first day of November, A. D. 1922 at the regular October Term, 1922, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final decision or judgment was entered in said Court dismissing his petition for habeas corpus and remanding him in custody of Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, for deportation, and

Your petitioner shows that in said decision, judgment and the proceedings had in this cause lately pending, certain errors were committed to the prejudice of your petitioner, all of which will
81 more in detail appear in the Assignment of Errors which is filed in this Court by your petitioner together with this petition.

Your petitioner further shows that Section 238 of the Judicial Code (36 Statute at Large 1157), provides "Appeals and Writs of Error may be taken from the District Courts * * * in any case that involves the construction or application of the Constitution of the United States; in any case in which the Constitutionality of
82 any law of the United States * * * is drawn in question.

Wherefore, your petitioner, the said John Avilla, prays that an appeal may be allowed him from said judgment to the Supreme Court of the United States and that said appeal may be made a supersedeas upon the filing of a bond to be fixed by the Court; that the petitioner may be admitted to bail pending the determination of the appeal in said Court.

Your petitioner further prays that a citation in due form of law issue requiring said Howard Eby, United States Immigrant Inspector in Charge, Chicago, the respondent in said appeal, to be and appear in the United States Supreme Court and then and there to make answer to the Assignment of Errors made by your petitioner upon the record in the proceedings in said cause; and the said petitioner herewith presents his Assignment of Errors in accordance with the rules of said United States Supreme Court and the course of practice in this honorable Court.

Your petitioner further shows that similar decisions and judgments were entered by this Court dismissing the petitions for habeas corpus of Herbert Mahler, Joseph Oates, Pietro Nigra, and William Moran, and remanding them to the custody of Howard Eby, Inspector of Immigration in Charge at Chicago, United States Department of Labor, the hearings on which said petitions of habeas corpus were by order of Court on November 1, 1922, consolidated
83 with the petition of habeas corpus of this petitioner; that one Bill of Exceptions will be filed in said District Court in said cause on behalf of your petition and the said persons with whom your petitioner's case was consolidated; that each of said persons with whom your petitioner's case was consolidated has filed in said Court in said cause in his own behalf, an Assignment of Errors together with a Petition for Appeal in said District Court to the Supreme Court of the United States; and that each of said persons with whom your petitioner's case has been consolidated, in the Assignment of Errors and Petition for Appeal so filed by him as aforesaid, prays that the judgment entered against him in said District Court may also be reversed and that he be ordered discharged by said Supreme Court of the United States; and that each of such Assignment of Error so filed in said District Court is substantially a duplicate of the Assignment of Errors herein filed in behalf of your petitioner.

Wherefore, your petitioner respectfully prays that an order may be entered in his behalf authorizing and directing the presentation of a single true copy of the record in the above entitled cause, said Bill of Exceptions, said several Assignments of Error, filed in said District Court in this cause, and of the proceedings in said District Court in the above entitled cause necessary to the hearing in said Supreme Court of the United States on said appeal, directly
84 to the Supreme Court of the United States as by law provided, and that the Clerk of this Court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and speedy justice done in the premises.

John Avilla, Otto Christensen, Attorney for Petitioner.

[File endorsement omitted.]

85 And on, to wit, the 4th day of November, 1922, came William Moran by his attorney and filed in the Clerk's office of said Court a certain Petition, in words and figures following, to wit:

86 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

34125.

In the Matter of

WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

PETITION FOR APPEAL.

[Filed Nov. 4, 1922.]

To the Hon. George Page, Judge of the District Court of the United States, Northern District of Illinois, Eastern Division:

Your petitioner, William Moran, by Otto Christensen, his attorney, respectfully represents that on the first day of November, A. D. 1922 at the regular October Term, 1922, of said District Court of the United States for the Northern District of Illinois, Eastern Division thereof, a final decision or judgment was entered in said Court dismissing his petition for habeas corpus and remanding him in custody of Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, for deportation, and

Your petitioner shows that in said decision, judgment and the proceedings had in this cause lately pending, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear in the Assignment of Errors, which is filed in this Court by your petitioner together with this petition.

87 Your petitioner further shows that Section 238 of the Judicial Code (36 Statute at Large 1157), provides "Appeals and Writs of Error may be taken from the District Courts * * * in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any of the United States * * * is drawn in

88 question.

Wherefore, your petitioner, the said William Moran, prays that an appeal may be allowed him from said judgment to the Supreme Court of the United States and that said appeal may be made

a supersedeas upon the filing of a bond to be fixed by the Court; that the petitioner may be admitted to bail pending the determination of the appeal in said Court.

Your petitioner further prays that a citation in due form of law issue requiring said Howard Eby, United States Immigrant Inspector in Charge, Chicago, the respondent in said appeal, to be and appear in the United States Supreme Court and then and there to make answer to the Assignment of Errors made by your petitioner upon the record in the proceedings in said cause; and the said petitioner herewith presents his Assignment of Errors in accordance with the rules of said United States Supreme Court and the course of practice in this honorable Court.

Your petitioner further shows that similar decisions and judgments were entered by this Court dismissing the petitions for habeas corpus of Herbert Mahler, John Avilla, Joseph Oates, and Pietro Nigra, and remanding them to the custody of Howard Eby, Inspector of Immigration in Charge at Chicago, United States Department of Labor, the hearings on which said petitions of habeas corpus were by
89 order of Court on November 1, 1922, consolidated with the petition of habeas corpus of this petitioner; that one Bill of Exceptions will be filed in said District Court in said cause on behalf of your petitioner and the said persons with whom your petitioner's case was consolidated; that each of said persons with whom your petitioner's case was consolidated has filed in said Court in said cause in his own behalf, an Assignment of Errors together with a Petition for Appeal in said District Court to the Supreme Court of the United States and that each of said persons with whom your petitioner's case has been consolidated, in the Assignment of Errors and Petition for Appeal so filed by him as aforesaid, prays that the judgment entered against him in said District Court may also be reversed and that he be ordered discharged by said Supreme Court of the United States; and that each of such Assignment of Error so filed in said District Court is substantially a duplicate of the Assignment of Errors herein filed in behalf of your petitioner.

Wherefore, your petitioner respectfully prays that an order may be entered in his behalf authorizing and directing the presentation of a single true copy of the record in the above entitled cause, said Bill of Exceptions, said several Assignments of Error, filed in said District Court in this cause, and of the proceedings in said District Court in the above entitled cause necessary to the hearing in said Supreme Court of the United States on said appeal, directly to the
90 Supreme Court of the United States as by law provided, and that the Clerk of this Court be authorized and directed to certify said record to the Supreme Court of the United States, as by law provided, to the end that the errors complained of, if any such have occurred, may be duly corrected, and full and speedy justice done in the premises.

William Moran. Otto Christensen, Attorney for Petitioner.

[File endorsement omitted.]

91 And on, to wit, the 4th day of November, 1922, came Herbert Mahler, by his attorney and filed in the Clerk's office of said Court a certain Assignment of Errors, in words and figures following, to wit:

92 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

34101.

In the Matter of

HERBERT MAHLER

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ASSIGNMENT OF ERRORS.

[Filed Nov. 4, 1922.]

Now comes Herbert Mahler, by Otto Christensen, his attorney, and connection with his petition for an appeal, says that in the record, proceedings and judgment aforesaid, error has intervened to his prejudice in the manner and form as follows, to-wit:

1. The Court erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned and in dismissing his petition and remanding him into custody for deportation, for the reason that the Amendment to the Immigration Act, passed May 10, 1920, under which it is attempted to deport the petitioner, was passed subsequent to the conviction of this petitioner of a violation of the Selective Service Act and Espionage Act; that said Amendment to the Immigration Law of May 10, 1920, is ex post facto in character, and said law and the proceedings thereunder to deport this petitioner are in contravention of Article 1, paragraph 9, Section 3 of the Constitution of the United States;

2. That the Court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United States;

3. That the Court erred in dismissing the petition for habeas corpus and remanding the appellant into custody for deportation, for the reason that the charge made against this petitioner as a basis for deportation is now nonexistent in that the Selective Service Act and the Espoinage Act, respectively, had been repealed by Congress and there is now no such offense under the Federal statutes as described in the Warrant of Deportation, and for the further reason that at the time of the issuance of the Warrant of Arrest; both the Selective

Service Act and the Espoinage Act were repealed and there is nothing for Sections A and E of the Amendment to the Immigration Act of May 10, 1920, to feed upon.

Wherefore, this petitioner and appellant, by reason of the errors aforesaid, prays that said judgment may be reversed and that he be ordered discharged.

Herbert Mahler, Petitioner. Otto Christensen, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

94 And on, to wit, the 4th day of November, 1922, came Joseph Oates by his attorney and filed in the Clerk's office of said Court a certain Assignment of Errors, in words and figures following, to wit:

95 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

In the Matter of

JOSEPH OATES

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ASSIGNMENT OF ERRORS.

[Filed Nov. 4, 1922.]

Now comes Joseph Oates, by Otto Christensen, his attorney, and in connection with his petition for an appeal, says that in the record, proceedings and judgment aforesaid, error has intervened to his prejudice in the manner and form as follows, to-wit:

1. The Court erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned and in dismissing his petition and remanding him into custody for deportation, for the reason that the Amendment to the Immigration Act, passed May 10, 1920, under which it is attempted to deport the petitioner, was passed subsequent to the conviction of this petitioner of a violation of the Selective Service Act and Espionage Act; that said Amendment

96 to the Immigration Law of May 10, 1920 is ex post facto in character, and said law and the proceedings thereunder to deport this petitioner are in contravention of Article I, Paragraph 9, Section 3 of the Constitution of the United States.

2. That the Court erred in not holding that this petitioner is held nd imprisoned without due process of law and in violation of the ifth Amendment of the Constitution of the United States.

3. That the Court erred in dismissing the petition for habeas orpus and remanding the appellant into custody for deportation, or the reason that the charge made against this petitioner as a basis or deportation is now non-existent in that the Selective Service ct and the Espionage Act, respectively, had been repealed by Con- ress and there is now no such offense under the Federal statutes described in the Warrant of Deportation, and for the further rea- n that at the time of the issuance of the Warrant of Arrest, both e Selective Service Act and the Espionage Act were repealed and ere is nothing for Sections A and E of the Amendment to the mmigration Act of May 10, 1920, to feed upon.

Wherefore, this petitioner and appellant, by reason of the errors oresaid, prays that said judgment may be reversed and that he be dered discharged.

Joseph Oates, Petitioner. Otto Christensen,
Attorney for Petitioner and Appellant.

[File endorsement omitted.]

And on, to wit, the 4th day of November, 1922, came Pietro Nigra by his attorney and filed in the Clerk's office of d Court a certain Assignment of Errors, in words and figures llowing, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

the District Court of the United States, October Term, A. D. 1922.

In the Matter of

PIETRO NIGRA

vs.

WARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ASSIGNMENT OF ERRORS.

[Filed Nov. 4, 1922.]

ow comes Pietro Nigra, by Otto Christensen, his attorney, and onnection with his petition for an appeal, says that in the record, eedings and judgment aforesaid, error has intervened to his udice in the manner and form as follows, to-wit:

The Court erred in not holding that this petitioner and appellant rongfully held and illegally imprisoned and in dismissing his

petition and remanding him into custody for deportation, for the reason that the Amendment to the Immigration Act, passed May 10, 1920, under which it is attempted to deport the petitioner, was passed subsequent to the conviction of this petitioner of a violation of the Selective Service Act and the Espionage Act; that said Amendment to the Immigration Law of May 10, 1920 is ex post facto
99 in character, and said law and the proceedings thereunder to deport this petitioner are in contravention of Article I, Paragraph 9, Section 3 of the Constitution of the United States.

2. That the Court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

3. That the Court erred in dismissing the petition for habeas corpus and remanding the appellant into custody for deportation, for the reason that the charge made against this petitioner as a basis for deportation is now non-existent in that the Selective Service Act and the Espionage Act, respectively, had been repealed by Congress and there is now no such offense under the Federal statutes as described in the Warrant of Deportation, and for the further reason that at the time of the issuance of the Warrant of Arrest, both the Selective Service Act and the Espionage Act were repealed and there is nothing for Sections A and E of the Amendment to the Immigration Act of May 10, 1920, to feed upon.

Wherefore, this petitioner and appellant, by reason of the errors aforesaid, prays that said judgment may be reversed and that he be ordered discharged.

Pietro Nigra, Petitioner. Otto Christensen, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

100 And on, to wit, the 4th day of November, 1922, came John Avilla, by his attorney and filed in the Clerk's office of said Court a certain Assignment of Errors, in words and figures following, to wit:

101 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

In the Matter of

JOHN AVILLA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ASSIGNMENT OF ERRORS.

[Filed Nov. 4, 1922.]

Now comes John Avilla, by Otto Christensen, his attorney, and in connection with his petition for an appeal, says that in the record, proceedings and judgment aforesaid, error has intervened to his prejudice in the manner and form as follows, to-wit:

1. The Court erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned and in dismissing his petition and remanding him into custody for deportation, for the reason that the Amendment to the Immigration Act, passed May 10, 1920, under which it is attempted to deport the petitioner, was passed subsequent to the conviction of this petitioner of a violation of the Selective Service Act and the Espionage Act; that said Amend-
102 ment to the Immigration Law of May 10, 1920 is ex post facto in character, and said law and the proceedings thereunder to deport this petitioner are in contravention of Article I, Paragraph 9, Section 3 of the Constitution of the United States.

2. That the Court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

3. That the Court erred in dismissing the petition for habeas corpus and remanding the appellant into custody for deportation, for the reason that the charge made against this petitioner as a basis for deportation is now non-existent in that the Selective Service Act and the Espionage Act, respectively, had been repealed by Congress and there is now no such offense under the Federal statutes as described in the Warrant of Deportation, and for the further reason that at the time of the issuance of the Warrant of Arrest, both the Selective Service Act and the Espionage Act were repealed and there is nothing for Sections A and E of the Amendment to the Immigration Act of May 10, 1920, to feed upon.

Wherefore, this petitioner and appellant, by reason of the errors aforesaid, prays that said judgment may be reversed and that he be ordered discharged.

John Avilla, Petitioner. Otto Christensen, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

103 And on, to wit, the 4th day of Nov., 1922, came William Moran by his attorney and filed in the Clerk's office of said Court a certain Assignment of Errors, in words and figures following, to wit:

104 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

In the Matter of

WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ASSIGNMENT OF ERRORS.

[Filed Nov. 4, 1922.]

Now comes William Moran, by Otto Christensen, his attorney, and in connection with his petition for an appeal, says that in the record, proceedings and judgment aforesaid, error has intervened to his prejudice in the manner and form as follows, to-wit:

1. The Court erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned and in dismissing his petition and remanding him into custody for deportation, for the reason that the Amendment to the Immigration Act, passed May 10, 1920, under which it is attempted to deport the petitioner, was passed subsequent to the conviction of this petitioner of a violation of the Selective Service Act and the Espionage Act; that said Amendment to the Immigration Law of May 10, 1920 is expost facto
105 in character, and said law and the proceedings thereunder to deport this petitioner are in contravention of Article I, Paragraph 9, Section 3 of the Constitution of the United States.

2. That the Court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

3. That the Court erred in dismissing the petition for habeas corpus and remanding the appellant into custody for deportation, for the reason that the charge made against this petitioner as a basis for deportation is now non-existent in that the Selective Service Act and

the Espionage Act, respectively, had been repealed by Congress and there is now no such offense under the Federal statutes as described in the Warrant of Deportation, and for the further reason that at the time of the issuance of the Warrant of Arrest, both the Selective Service Act and the Espionage Act were repealed and there is nothing for Sections A and E of the Amendment to the Immigration Act of May 10, 1920, to feed upon.

Wherefore, this petitioner and appellant, by reason of the errors aforesaid, prays that said judgment may be reversed and that he be ordered discharged.

William Moran, Petitioner. Otto Christensen, Attorney for Petitioner and Appellant.

[File endorsement omitted.]

06 And afterwards on, to wit, the 4th day of November, 1922, this matter coming on to be heard, the following order was ntered by the Court:

07 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

n the District Court of the United States, October Term, A. D. 1922.

Saturday, Nov. 4, 1922.

Present: Honorable George T. Page, Circuit Judge.

In the Matter of

HERBERT MAHLER

vs.

OWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ORDER ALLOWING APPEAL AND BAIL PENDING APP L.

[Filed Nov. 4, 1922.]

On reading of the petition of Herbert Mahler for appeal and consideration of the Assignment of Errors presented therewith, it is dered that the appeal as prayed for be, and is, hereby allowed. nd it appearing to the Court that a citation was duly served as pro- ded by law, it is ordered that petitioner be admitted to bail pending e final determination of this appeal in the sum of One Thousand llars ($1,000.00). The appeal to operate as a supersedeas.

Geo. T. Page, C. Judge.

8 And afterwards on, to wit, the 4th day of November, 1922, this matter coming on to be heard, the following order was ered by the Court:

109 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922

Saturday, Nov. 4, 1922.

Present: Honorable George T. Page, Circuit Judge.

In the Matter of

JOSEPH OATES

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service United States Department of Labor.

ORDER ALLOWING APPEAL AND BAIL PENDING APPEAL.

[Filed Nov. 4, 1922.]

On reading of the petition of Joseph Oates for appeal and consideration of the Assignment of Errors presented therewith, it is ordered that the appeal as prayed for be, and is, hereby allowed. And it appearing to the Court that a citation was duly served as provided by law it is ordered that petitioner be admitted to bail pending the final determination of this appeal in the sum of One Thousand Dollars ($1,000.00). The appeal to operate as a supersedeas.

Geo. T. Page, Judge

110 And afterwards on, to wit, the 4th day of November, 1922 this matter coming on to be heard, the following order was entered by the Court:

111 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922

Saturday, November, 1922.

Present: Honorable George T. Page, Circuit Judge.

In the Matter of

PIETRO NIGRA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ORDER ALLOWING APPEAL AND BAIL PENDING APPEAL.

[Filed Nov. 4, 1922.]

On reading of the petition of Pietro Nigra for appeal and consideration of the Assignment of Errors presented therewith, it is

ordered that the appeal as prayed for be, and is, hereby allowed. And it appearing to the Court that a citation was duly served as provided by law, it is ordered that petitioner be admitted to bail pending the final determination of this appeal in the sum of One Thousand Dollars ($1,000.00). The appeal to operate as a supersedeas.

Geo. T. Page, C. Judge.

[File endorsement omitted.]

112 And afterwards on, to wit, the 4th day of November, 1922, this matter coming on to be heard, the following order was entered by the Court:

113 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

Saturday, November 4, 1922.

Present: Honorable Geo. T. Page, Circuit Judge.

In the Matter of

JOHN AVILLA

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ORDER ALLOWING APPEAL AND BAIL PENDING APPEAL.

[Filed Nov. 4, 1922.]

On reading of the petition of John Avilla for appeal and consideration of the Assignment of Errors presented therewith, it is ordered that the appeal as prayed for be, and is, hereby allowed. And it appearing to the Court that a citation was duly served as provided by law, it is ordered that petitioner be admitted to bail pending the final determination of this appeal in the sum of One Thousand Dollars ($1,000.00). The appeal to operate as a supersedeas.

Geo. T. Page, Judge.

114 And afterwards on, to wit, the 4th day of November, 1922, this matter coming on to be heard, the following order was entered by the Court:

115 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States, October Term, A. D. 1922.

Saturday, November 4, 1922.

Present: Honorable George T. Page, Circuit Judge.

In the Matter of

WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge Chicago Immigration Service, United States Department of Labor.

ORDER ALLOWING APPEAL AND BAIL PENDING APPEAL.

[Filed Nov. 4, 1922.]

On reading of the petition of William Moran for appeal and consideration of the Assignment of Errors presented therewith, it is ordered that the appeal as prayed for be, and is, hereby allowed. And it appearing to the Court that a citation was duly served as provided by law, it is ordered that petitioner be admitted to bail pending the final determination of this appeal in the sum of One Thousand Dollars ($1,000.00). The appeal to operate as a supersedeas.

Geo. T. Page, Judge.

116 And on to-wit: the 29th day of November, 1922, there was filed in the Clerk's office of said court a certain notice, in words and figures following to-wit:

117 STATE OF ILLINOIS,
County of Cook, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

NOTICE.

[Filed Nov. 29, 1922.]

To Charles F. Clyne, Esq., U. S. Attorney and attorney for said Howard Eby, appellee:

Please take notice that on the 29th day of November, A. D. 1922, at ten A. M., or as soon thereafter as counsel can be heard, I shall appear before His Honor, George T. Page, judge of the District Court of the United States, for the Northern District of Illinois, in the room usually occupied by him as a court room in the Federal Building, Chicago, Illinois, and ask for an order directing the issuance of an additional citation to the Supreme Court of the United States and for an order enlarging the time within which the record in the above entitled cause shall be filed with the clerk of the Supreme Court of the United States to December 30th, 1922; at which time and place you may appear if you so desire.

Otto Christensen, Attorney for Appellant.

[File endorsement omitted.]

118 And afterwards on, to wit, the 29th day of November, 1922, this matter coming on to be heard, the following order was entered by the Court:

119 STATE OF ILLINOIS,
County of Cook, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Wednesday, November 29, 1922.

Present: Honorable George T. Page, Circuit Judge.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

ORDER ISSUING CITATIONS.

[Filed Nov. 29, 1922.]

Order.

On motion of Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, appellants, by Otto Christensen, their attorney, and upon notice duly served upon counsel for Howard Eby, the appellee in the above entitled cause, It is ordered that an additional citation to the Supreme Court of the United States be issued in the above entitled cause; and it is further ordered that the time within which a record in the above entitled cause should be filed with the clerk of the Supreme Court of the United States be, and the same is hereby enlarged to and including December 30th, 1922.

Geo. T. Page, C. Judge.

120 And on, to wit, the 29th day of November, 1922, came Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla and William Moran, as principals and Otto Christenses as surety, and filed in the office of the Clerk of said Court a certain Bond on Appeal for Costs in words and figures following, to wit:

121 STATE OF ILLINOIS,
County of Cook, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

APPEAL BOND FOR COSTS.

[Filed Nov. 29, 1922.]

Know all men by these presents, that we, Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, principals and Otto Christensen as surety, are held and firmly bound unto Howard Eby in the full and just sum of Two hundred fifty dollars ($250.00), to be paid to the said Howard Eby, his executors, administrators or assigns; to which payment, well and truely to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals, and dated this 25th day of November, in the year of Our Lord, One Thousand Nine Hundred and twenty-two.

Whereas, lately at the October term, A. D. 1922, at the District Court of the United States, for the Northern District of Illinois, Eastern Division, in a suit pending in said court, between Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, and Howard Eby, a judgment was rendered against the said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William
122 Moran dismissing their respective petitions for Habeas Corpus and remanding them into custody and for costs, and the said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran having obtained an appeal to the Supreme Court of the United States, to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, that if the said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran shall prosecute their appeal to effect and answer for damages and costs, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

John Avila. (Seal.) Herbert Mahler. (Seal.) Joseph Oates. (Seal.) William Moran. (Seal.) Pietro Nigra. (Seal.) Otto Christensen. (Seal.) O. K. J. B. Bodie, Asst. Dis. Atty. Approved by Geo. T. Page, C. Judge. 11/29/22.

[File endorsement omitted.]

123 And on to-wit: the 29th day of November, 1922, there was filed in the Clerk's office of said Court a Bill of Exceptions, in words and figures following to-wit:

124 STATE OF ILLINOIS,
County of Cook, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Case- Nos. 34099, 34100, 34101, 34102, 34125.

In the Matter of

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

HOWARD EBY, Inspector in Charge U. S. Immigration Service, U. S. Dept. of Labor.

BILL OF EXCEPTIONS.

[Filed Nov. 29, 1922.]

Be it remembered that the above entitled cause came on for hearing on the first day of November A. D. 1922, being one of the days of the October term of said court, before the Honorable George Page, one of the judges of said court, Otto Christensen appearing for the petitioners, and Charles Clyne, United States Attorney, appearing for the respondent; that upon said hearing, the parties hereto entered into the following written stipulation:

125 In the District Court of the United States, Northern District of Illinois, Eastern Division.

Case No. 34101.

UNITED STATES OF AMERICA ex Rel. HERBERT MAHLER, JOHN VILLA, JOSEPH OATES, PIETRO NIGRA, and WILLIAM MORAN

vs.

HOWARD D. EBEY, Inspector in Charge United States Immigration Service, United States Department of Labor.

STIPULATION FOR CONSOLIDATION.

[Filed Nov. 1, 1922.]

Now come relators, Herbert Mahler, John Villa, Joseph Oates, Pietro Nigra and William Moran, by Otto Christensen, their attorney,

Howard D. Ebey, by Charles F. Clyne, United States District
orney, and stipulate that the cases of Herbert Mahler, John Villa,
eph Oates, Pietro Nigra and William Moran be consolidated and
rd in one proceeding.

t is further stipulated and agreed by and between the relators and
Howard D. Ebey, that the following were the Warrants of Ar-
, and the Warrants of Deportation issued against each of the above
tors.

t is further stipulated by and between the above named relators
Howard D. Ebey, that the following Exhibits A, B and C, are
Exhibits mentioned in the above testimony taken at the hearings
the Warrants of Arrest, and that the same were there introduced
vidence in each case, on behalf of the United States Department
abor.

t is further stipulated by and between the parties that said War-
rants of Arrest, testimony of the hearings on said Warrants
of Arrest, attached to petitions of Habras Co-pus and the Ex-
hibits introduced in evidence upon said hearings marked Ex-
its A, B and C, and the Warrants of Deportation, have been in-
luced and received in evidence in the hearing upon said writs
abeas corpus.

Otto Christensen, Attorney for Petitioners.
Charles F. Clyne, United States At-
torney.

File endorsement omitted.]

The following are the Warrants of Arrest mentioned in said stipulation:

WARRANT FOR ARREST.

No. 54616/151.

United States of America,

U. S. Department of Labor,

Washington.

Harry R. Landis, Inspector in Charge, Chicago, Illinois:

Whereas, from evidence submitted to me, it appears that the alien
bert Mahler, who landed at the unknown port of Seattle, Wash.,
r about the 1st day of April, 1913, has been found in the United
es in violation of the Act of May 10, 1920 for the following
ng other reasons:

hat he is an alien who since August 1, 1914, has been convicted
violation of or a conspiracy to violate an Act entitled "An Act
unish acts of interference with the foreign relations, the neu-
ty, and the foreign commerce of the United States, to punish
onage, and better to enforce the criminal laws of the United
es, and for other purposes," approved June 15, 1917, or the

amendment thereof approved May 16, 1918, the judgment on such conviction having become final; and that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an act entitled "an Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, or any amendment thereof or supplement thereto; the judgment on such conviction having become final,

I, Theodore G. Risley, Acting secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized payable from the appropriation: "Expenses of Regulating Immigration, 1921." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of June, 1921.

(Signed) Theodore G. Risley, Acting Secretary of Labor.

129 WARRANT FOR ARREST.

No.54616/38.

United States of America,

U. S. Department of Labor,

Washington.

To Harry R. Landis, Inspector in Charge, Chicago, Ill., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Joseph A. Oates, or John Joseph Oates, who landed at an unknown port, on or about the 15th day of June 1915, has been found in the United States in violation of the Immigration act of February 5, 1917, for the following among other reasons:

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final; and that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United

tates", approved May 18, 1917, or any amendment thereof or sup-
lement thereto, the judgment on such conviction having become
nal,

I, Theodore G. Risley, Acting Secretary of Labor, by virtue of
ie power and authority *v*ested in me by the laws of the United
tates, do hereby command you to take into custody the said alien
nd grant him a hearing to enable him to show cause why he should
ot be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized,
ayable from the appropriation: "Expenses of Regulating Immi-
ration, 1921." Pending fu-ther proceedings the alien may be re-
ased from custody upon furnishing satisfactory bond in the sum
f $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of June, 1921.

(Signed) Theodore G. Risley, Acting Secretary of Labor.

30 WARRANT FOR ARREST.

No. 54616/56.

United States of America,

U. S. Department of Labor,

Washington.

o Harry R. Landis, Inspector in Charge, Chicago, Ill., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien ietro Nigra, who land- at an unknown port, on — the — day of —, has been found in the United States in violation of the im-igration act of February 5, 1917, for the following among other easons:

That he is an alien who since August 1, 1914, has been convicted f a violation of or a conspiracy to violate an Act entitled "An Act punish acts of interference with the foreign relations, the neu-ality, and the foreign commerce of the United States, to punish spionage, and better to enforce the criminal laws of the United tates, and for other purposes," approved June 15, 1917, or the mendment thereof approved May 16, 1918, the judgment on such onviction having become final; and that he is an alien who since ugust 1, 1914, has been convicted of a violation of or a conspiracy violate an Act entitled "An Act to authorize the President to ncrease temporarily the Military Establishment of the United tates," approved May 18, 1917, or any amendment thereof or sup-lement thereto, the judgment on such conviction having become nal,

I, Theodore G. Risley, Acting Secretary of Labor, by virtue of the ower and authority vested in me by the laws of the United States,

do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation: "Expenses of Regulating Immigration, 1921." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of June, 1921.

(Signed) Theodore G. Risley, Acting Secretary of Labor.

131 WARRANT FOR ARREST.

No. 54616/60.

United States of America,

U. S. Department of Labor,

Washington.

To Harry R. Landis, Inspector in Charge, Chicago, Ill., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien John Avila, who landed at an unknown port, on or about the 1st day of January, 1914, has been found in the United States in violation of the Act of May 10, 1920, for the following among other reasons:

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to Punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final; and that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final,

I, Theodore G. Risley, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation: "Expenses of Regulating Immigration, 1921." Pending further proceedings the alien may be released

from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of June, 1921.

(Signed) Theodore G. Risley, Acting Secretary of Labor.

132 WARRANT FOR ARREST.

No. 54616/55.

U. S. Department of Labor,

Washington.

To Harry R. Landis, Inspector in Charge, Chicago, Ill., or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien William Moran, who landed at an unknown port, has been found in the United States in violation of the Act of May 10, 1920, for the following among other reasons:

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes, "approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final.

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final.

I, Theodore G. Risley, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary are authorized, payable from the appropriation: "Expenses of Regulating Immigration, 1921." Pending further proceedings the alien may be released from custody upon furnishing satisfactory bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 2nd day of June, 1921.

(Signed) Theodore G. Risley, Acting Secretary of Labor.

133 The following is the testimony taken upon the hearings held on said warrants of arrest mentioned in said stipulation and attached to the petitioners for Habeas Corpus.

U. S. Department of Labor,

Immigration Service.

Chicago File No. 2040/105-35.

REPORT OF HEARING

Accorded alien HERBERT MAHLER, under Department Warrant of arrest No. 54616/151 dated June 2, 1921, at U. S. Federal Prison, Leavenworth, Ks. on the 14th day of June 1921, by C. H. Paul, U. S. Immigrant Inspector, Minutes of hearing taken by I. M. Minor, transcribed by I. M. Minor, said alien being able to speak and understand the English language satisfactorily, no interpreter, competent in the language, the language spoken and understood by the alien, was employed (being first duly sworn, if not an official interpreter of the U. S. Immigration Service).

Alien sworn.

The examining inspector then made the following statement to the alien:

"I show you, and ask you to read a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you should not be deported from the United States for the reasons set forth in the warrant and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

By examining inspector:

Q. Have you read the warrant and do you fully understand the nature of this proceeding?

A. Yes.

Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?

A. Yes.

134 Q. (If foregoing question is answered in the affirmative) Who is your attorney?

A. Otto Christensen.

Q. (To attorney:) Do you represent this alien and are you ready to proceed with this hearing at this time?

A. Yes.

Q. (If alien does not wish to be represented by counsel.) Do you waive all right to counsel and are you ready to *to* proceed with the hearing at this time?

A. ——.

The alien was then duly sworn and gave the following testimony:

Q. What is your full, true and correct name?
A. Herbert Louis Mahler.
Q. By what other names have you been known?
A. None.
Q. What is your complete address?
A. Federal Prison, Leavenworth, Kansas.
Q. What is your occupation?
A. Laborer.
Q. Can you read and write?
A. I can.
Q. Are you married or single?
A. Single.
Q. (If married.) What is the name and address of your husband (or wife)?
A. ——.
Q. Are you dependent upon your husband (or wife) for support?
A. ——.
Q. Are they dependent upon you for support?
A. ——.
Q. If you are deported what provision will be made for other member of family?
A. ——.
Q. Have you personal property or baggage of any kind?
A. I have.
Q. Where?
A. Some in Chicago, balance in Seattle—Mary H. Gallegher.
135 Q. When and where were you born (Municipality, county or province, country)?
A. Chatham, Ontario, Canada.
Q. Of what country are you a citizen at the moment of this hearing?
A. Dominion of Canada.
Q. On what do you base your claim to such citizenship?
A. Birth.
Q. Have you declared your intention to become a citizen of the United States?
A. No.
Q. Have you been naturalized as a citizen of the United States? If so when and where?
A. ——.
Q. Where was your father born?
A. Delaware, Ontario, Canada.
Q. Has he ever resided in the U. S.?
A. No.
Q. Has he been naturalized as a citizen of the United States? If so when and where?
A. ——.
Q. Where was your husband born?
A. ——.

Q. Where was your husband's father born?
A. ——.
Q. Have either of them been naturalized as citizen of the Unite States? If so when and where?
A. ——.
Q. When did you last enter the United States and where? Giv full details of time, place and manner of entry. (Compare alien wit verification of landing.)
A. Seattle, Washington, about 1912.
Q. If you entered from Canada, following arrival from countr other than the United States, give time and place of landing i Canada; name of steamer; were you (or your father *of* your husband naturalized as a citizen of Canada, and if so give name of cour date and place; give name- and addresses of place where you worke and lived in Canada, and names and addresses of people who ca satisfy Canadian Immigration Officials that you resided in Canad from date of landing there to date of departure. (Get full informa tion.)
A. ——.
Q. Resided here continuously since that time?
A. Yes.
Q. Have not been back to Canada?
A. No.
136 Q. Did you ever live in the United States prior to you last entry? If so when and where?
A. ——.
Q. Where is your father living?
A. John Mahler, Chatham, Ontario, Canada.
Q. Have you a passport? (Attach copy to record *of* quote i full in record.)
A. No.
Q. Give names and addresses of relatives abroad to whom yo wish to go if deported.
A. ——.

Description.

Age. 30; Height, 5 ft. 11 in.; Weight, 194; Forehead, Medium Eyes, Blue; Mouth, Small; Chin, Round; Hair, Light; Complexion Fair; Face, Oval; Nose, Ordinary; Marks: ——.

Q. Mr. Mahler, were you tried in the United States District Cour before Judge Landis for a violation of Federal Law?
A. Yes.
Q. Have you been sentenced to prison at Leavenworth?
A. Yes.
Q. Are you now serving time under that sentence?
A. I am.

I introduce in evidence and make a part of the record of this hear ing "indictment on Sections 6, 19 and 37 of the Criminal Code of th United States, and Section 4 of the 'Espionage Act' of June 15 1917,'" number of said indictment is 6125. Marked Exhibit "A."

I introduce in evidence and make a part of the record of this hearing Certified copy of the judgment of said United States District Court before Honorable Judge Landis, in the case of "The United States vs. William D. Haywood, et al. No. 6125." Marked Exhibit "B."

I introduce in evidence and make a part of the record of this hearing the Judgment and Opinion of the United States Circuit Court of Appeals in the case of "William D. Haywood, et al., Plaintiffs in Error, vs. United States of America, Defendant in Error," and marked Exhibit "C."

137 Q. Mr. Christensen, have you any questions you desire to ask the alien?

A. I have no questions to ask, and as to Exhibits A, B, and C, I will reserve my objections to these exhibits to the time of filing my brief, and in the brief designate my objections, pursuant to the rules; and I advise my client not to answer any further questions.

Inspector Paul to alien:

Q. The attorney advises you to refuse to answer any further questions; upon advice of counsel, do you refuse to answer any further questions?

A. Yes, sir.

Inspector Paul to Attorney Christensen:

Q. Mr. Christensen, the appeal from the United States District Court to the Circuit Court is not a certified copy of the Opinion of the Circuit Court; do you waive the certification and permit its introduction?

A. I do. I have read it and it is a true copy.

That is all.

138 U. S. Department of Labor,

Immigration Service.

Chicago File No. 2040/105-21.

REPORT OF HEARING

Accorded alien JOSEPH A. OATES or JOHN JOSEPH OATES, under Department Warrant of arrest No. 5416/38 dated June 2, 1921 at U. S. Federal Prison, Leavenworth, Ks. on the 14th day of June 1921 by C. H. Paul U. S. Immigrant Inspector, Minutes of hearing taken by I. M. Minor, transcribed by I. M. Minor said alien being able to speak and understand the English language satisfactorily, no interpreter, competent in the language, the language spoken and understood by the alien, was employed (being first duly sworn if not an official interpreter of the U. S. Immigration Service).

Alien sworn.

The examining inspector then made the following statement
the alien:

"I show you, and ask you to read, a warrant issued by the Ho
Secretary (or Acting Secretary) of Labor of the United States f
your arrest, to afford you an opportunity to show cause why yo
should not be deported from the United States for the reasons s
forth in the warrant and any other reasons which may appear
your hearing proceeds."

The warrant was then offered to the alien for his (or her) in
spection.

By examining inspector:

Q. Have you read the warrant and do you fully understand th
nature of this proceeding?
A. I do.
Q. You are advised that you have the right to be represented b
counsel at this hearing. Do you wish to be so represented?
A. Yes.
Q. (If foregoing question is answered in the affirmative.) Who i
your attorney?
A. Otto Christensen.

To Attorney:

Q. Do you represent this alien and are you ready to proceed with
this hearing at this time?
A. Yes.
Q. (If alien does not wish to be represented by counsel.) Do you
waive all right to counsel and are you ready to proceed with the hear-
ing at this time?
A. ——.

139 The alien was then duly sworn and gave the following tes-
timony:

Q. What is your full, true and correct name?
A. Joseph Oates.
Q. By what other names have you been known?
A. No other.
Q. What is your complete address?
A. Federal Prison, Leavenworth, Kansas.
Q. What is your occupation?
A. Miner.
Q. Can you read and write?
A. I can.
Q. Are you married or single?
A. Single.

Q. (If married.) What is the name and address of your husband (or wife)?
A. ——.
Q. Are you dependent upon your husband (or wife) for support?
A. ——.
Q. Are they dependent upon you for support?
A. ——.
Q. If you are deported what provision will be made for other member of family?
A. ——.
Q. What baggage and valuables have you, and where are they?
A. Nothing.
Q. When and where were you born (Municipality, county, or province, country)?
A. County of Cumberland, England—Cleator.
Q. Of what country are you a citizen at the moment of this hearing?
A. Great Britain.
Q. On what do you base your claim to such citizenship?
A. Birth.
Q. Have you been naturalized as a citizen of the United States? If so when and where?
A. ——.
Q. Have you declared your intention to become a citizen?
A. No.
Q. Ever been in the United States? In England?
A. No.
Q. Where was your husband born?
A. ——.
Q. Where was your husband's father born?
A. ——.
140 Q. Have either of them been naturalized as citizens of the United States? If so when and where?
A. ——.
Q. When did you last enter the United States and where? Give full details of time, place and manner of entry. (Compare alien with verification of Landing.)
A. I come into the country 1904-5, on the S. S. "Cymric," White Star Line, Boston. I think it was the latter part of September or early in October then I came into the country from Mexico in February 1907 through the port of Naco, Arizona; and since that do not remember being out of the country.
Q. Resided here continuously since that time?
A. Yes.
Q. Did you ever live in the United States prior to your last entry? If so when and where?
A. ——.
Q. Have you a passport?
A. Did not need them when I came.
Q. What relatives have you in England?
A. About four sisters.

Description.

Age, 41; Height, 5 ft. 7 in.; Weight, 155; Forehead, Medium Eyes, Blue; Mouth, Medium small; Chin, Square; Hair, Black-gray Complexion, ruddy; Face, oval; Nose, ordinary. Marks: ——.

141 Q. Mr. Oates, were you tried in the United States District Court before Judge Landis for a violation of Federal Law?
A. Yes.
Q. Have you been sentenced to prison at Leavenworth?
A. Yes.
Q. Are you now serving time under that sentence?
A. I am.

I introduce in evidence and make a part of the record of this hearing—"Indictment on Sections 6, 19 and 37 of the Criminal Code of the United States, and Section 4 of the 'Espionage Act' of June 15, 1917;'" number of said indictment is 6125. Marked Exhibit "A."

I introduce in evidence and make a part of the record of this hearing certified copy of the Judgment of said United States District Court before Honorable Judge Landis, in the case of "The United States, vs. William D. Haywood, et al. No. 6125. Marked Exhibit "B."

I introduce in evidence and make a part of the record of this hearing the judgment and Opinion of the United States Circuit Court of Appeals in the case of "William D. Haywood, et al., Plaintiffs in Error, vs. United States of America, Defendant in Error, marked Exhibit "C."

Q. Mr. Christensen, have you any questions you desire to ask the alien?

A. I have no questions to ask, and as to Exhibits A, B and C, I will reserve my objections to these exhibits to the time of filing my brief, and in the brief designate my objections, pursuant to the rules; and I advise my client not to answer any further questions.

Inspector Paul to alien:

Q. The attorney advises you to refuse to answer any further questions; upon advise of counsel, do you refuse to answer any further questions?

A. Yes sir.

Inspector to Attorney Christensen:

Q. Mr. Christensen, the appeal from the United States District Court to the Circuit Court is not a certified copy of the Opinion of the Circuit Court; do you waive the certificates and permit its introduction?

A. I do. I have read it and it is a true copy.

142 U. S. Department of Labor,

Immigration Service.

Chicago File No. 2040/105-19.

REPORT OF HEARING

Accorded alien PIETRO NIGRA, or NIGRI, under Department Warrant of arrest No. 54616/56 dated June 2, 1921, at U. S. Federal Prison, Leavenworth, Kansas on the 15th day of June 1921 by C. H. Paul, U. S. Immigrant Inspector. Minutes of hearing taken by I. M. Minor, Transcribed by I. M. Minor said alien being able to speak and understand the English language satisfactorily, no interpreter competent in the language, the language spoken and understood by the alien, was employed (being first duly sworn, if not an official interpreter of the U. S. Immigration Service).

Alien sworn.

The examining inspector then made the following statement to the alien:

"I show you and ask you to read, a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you should not be deported from the United States for the reasons set forth in the warrant and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

By examining inspector:

Q. Have you read the warrant and do you fully understand the nature of this proceeding?

A. Yes.

Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?

A. Yes.

Q. (If foregoing question is answered in the affirmative.) Who is your attorney?

A. Otto Christensen.

To attorney:

Q. Do you represent this alien and are you ready to proceed with this hearing at this time?

A. Yes.

Q. (If alien does not wish to be represented by counsel.) Do you waive all right to counsel and are you ready to proceed with the hearing at this time?

A. ——.

143 The alien was then duly sworn and gave the following testimony:

Q. What is your full, true and correct name?
A. Pietro Nigro.
Q. By what other names have you been known?
A. None.
Q. What is your complete address?
A. Federal Prison, Leavenworth, Kansas.
Q. What is your occupation?
A. Miner.
Q. Can you read and write?
A. Yes.
Q. Are you married or single?
A. Single.
Q. (If married.) What is the name and address of your husband (or wife)?
A. ——.
Q. Are you dependent upon your husband (or wife) for support?
A. ——.
Q. Are they dependent upon you for support?
A. ——.
Q. If you are deported what provision will be made for other member- of family?
A. ——.
Q. Have you any personal property?
A. No.
Q. When and where were you born (municipality, county or province; country)?
A. 25th of November 1884—Castellamonte, Canavese, Sourino, Italy.
Q. Of what country are you a citizen at the moment of this hearing?
A. Italy.
Q. On what do you base your claim to such citizenship?
A. Birth.
Q. Have you ever declared your intention to become a citizen of the U. S.?
A. I make first paper.
Q. Where was your father born?
A. Italy.
Q. Was he ever in the United States?
A. No.
Q. Where was your husband born?
A. ——.
Q. Where was your husband's father born?
A. ——.

144 Q. Have either of them been naturalized as citizen- of the United States? If so when and where?
A. ——.
Q. When did you last enter the United States, and where? Give

details of time, place and manner of entry. (Compare alien verification of landing.)
. 28th or 29th of December 1903, New York, "Champagne" ns-Atlantic.
. If you entered from Canada, following arrival from country r than the United States, give time and place of landing in ada; name of steamer; were you (or your father or your hus-d) naturalized as a citizen of Canada, and if so give name of t, date and place; give name and addresses of place where you ked and lived in Canada, and names and addresses of people who satisfy Canadian Immigration Officials that you resided in ada from date of landing there to date of departure. (Get full rmation.)
. ——.
. Did you ever live in the United States prior to your last entry? when and where?
. ——.
. Have you a passport?
. Yes.
. Where is it?
. Attorney.
. Any near relatives in Italy?
. Jonamie, brother, same town.
. Where is your father?
. Dead.

Description.

ge, 37; Height, 5 ft. 6 in.; Weight, 140; Forehead, Medium h; Eyes, Brown, Mouth, small full lip, Chin, Round; Hair, Black, on top; Complexion, Dark; Face, Thin; Nose, Ordinary; ks: ——.

U. S. Department of Labor,

Immigration Service.

Chicago File No. 2040/105-24.

REPORT OF HEARING

orded alien JOHN AVILA under Department Warrant of arrest 54616/60 dated June 2, 1921 at U. S. Federal Prison, Leaven-th, Kansas on the 14th day of June, 1921, by C. H. Paul, U. S. migrant Inspector. Minutes of hearing taken by I. M. Minor nscribed by I. M. Minor, said alien being able to speak and un-tand the English language satisfactorily, no interpreter, com-nt in the language, the language spoken and understood by the , was employed (being first duly sworn, if not an official inter-er of the U. S. Immigration service).

Alien sworn.

The examining inspector then made the following statement to the alien:

"I show you, and ask you to read a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you should not be deported from the United States for the reasons set forth in the warrant and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

By examining inspector:

Q. Have you read the warrant and do you fully understand the nature of this proceeding?
A. Yes.
Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?
A. Yes.
Q. (If foregoing question is answered in the affirmative.) Who is your attorney?
A. Otto Christensen.

To attorney:

Q. Do you represent this alien and are you ready to proceed with this hearing at this time?
A. Yes.
Q. (If alien does not wish to be represented by counsel.) Do you waive all right to counsel and are you ready to proceed with the hearing at this time?
A. ——.

146 The alien was then duly sworn and gave the following testimony:

Q. What is your full, true and correct name?
A. John Avila.
Q. By what other names have you been known?
A. None.
Q. What is your complete address?
A. Federal Prison, Leavenworth, Kansas.
Q. What is your occupation?
A. Barber.
Q. Can you read and write?
A. Yes.
Q. Are you married or single?
A. Married.
Q. (If married.) What is the name and address of your husband (or wife)?

A. Florence—7 Proctors Court, Lowell, Mass.
Q. Any children?
A. Yes.
Q. Are you dependent upon your husband (or wife) for support?
A. Yes.
Q. Gives names and ages of your childred?
A. Manuel 11-12, Mary 10-9, John 5.
Q. What baggage and valuable- have you and where are they?
A. Personal property in possession of my wife.
Q. Where were you born (Municipality, county or province, country)?
A. Tuxain, Portugal.
Q. Of what country are you a citizen at the moment of this hearing?
A. In 1915 I had my first papers; I had to take full papers in 1918; there was five years of that time I was in jail.
Q. On what do you base your claim to such citizenship?
A. ——.
Q. Had you declared your intention to become a citizen of the U. S.?
A. I registered as citizen of this country with the intention of becoming a citizen.
Q. You are then a citizen of Portugal at present?
A. I don't know.
Q. Where was your father born?
A. Portugal.
Q. Has he ever been in the U. S.?
A. Cannot say—was a kid when he died.
Q. Where was your husband's father born?
A. ——.
147 Q. Have either of them been naturalized as citizen of the United States. If so when and where?
A. ——.
Q. When did you last enter the United States and where? Give full details of time, place and manner of entry. (Compare alien with verification of landing).
A. When my father died all my family came to this country.
Q. When did you enter?
A. July 1904.
Q. If you entered from Canada, following arrival from country other than the United States, give time and place of landing in Canada; name of steamer; were you (or your father *of* your husband) naturalized as a citizen of Canada, and if so give name of court, date and place; give name and addresses of place where you worked and lived in Canada, and names and addresses of *of* people who can satisfy Canadian Immigration Officials that you resided in Canada from date of landing there to date of departure, (get full information?
A. ——.
Q. Where?

A. Cannot tell exactly; was 13 years of age. New Bedford, Mass. was the port.

Q. Have you resided here continuously since that time?

A. Yes.

Q. Did you ever live in the United States prior to your last entry? If so when and where?

A. ——.

Q. Have you any relatives in Portugal?

A. All in this country.

Q. Give names and addresses of relatives abroad to whom you wish to go if deported?

A. ——.

I introduce in evidence and make a part of the record of this hearing—"Indictment of William D. Haywood, et al. on Sections 6, 19 and 37 of the Criminal Code of the U. S. and Section 4 of the "Espionage Act" of June 15, 1917. Number of said indictment is 6125." (Marked Exhibit "A").

I introduce in evidence and make a part of the record of this hearing—certified copy of the judgment of said United — District Court before Honorable Judge Landis in the case of "The United States vs. William D. Haywood, et al., No. 6125." (Marked Exhibit "B").

I introduce in evidence and make a part of the record of this hearing of the Opinion and Judgment of the United States Circuit Court of Appeals in the case of "William D. Haywood, et al., Plaintiffs in error, vs. United States of America, Defendant in Error." (Marked Exhibit "C").

Q. Mr. Christensen, have you any questions you desire to ask the alien?

A. I have no questions to ask, and as to Exhibits A, B and C, I will reserve my objections to these exhibits to the time of filing my brief, and in the brief designate my objections pursuant to the rules.

Inspector Paul to Attorney Christensen:

Q. Mr. Christensen, the appeal from the United States District Court to the Circuit Court is not a certified copy of the Opinion of the Circuit Court; do you waive the certification and permit its introduction?

A. I do. I have read it and it is a true copy.

That is all.

Description.

Age, 30; Height, 5 ft. 11 in.; Weight, 180; Forehead, Medium; Eyes, Black; Mouth, small; chin, round; Hair Black; Complexion, Dark; Face, Thin; Nose, Oval; Marks: ——.

148

U. S. Department of Labor,

Immigration Service.

Chicago File No. 2040/105-18.

REPORT OF HEARING

Accorded alien WILLIAM MORAN under Department Warrant of arrest No. 54616/55, dated June 2, 1921 at U. S. Federal Prison, Leavenworth, Kansas, on the 15th day of June 1921 by C. H. Paul U. S. Immigrant Inspector. Minutes of hearing taken by I. M. Minor Transcribed by I. M. Minor, said alien being able to speak and understand the English Language satisfactorily, no interpreter, competent in the language, the language spoken and understood by the alien, was employed (being first duly sworn, if not an official interpreter of the U. S. Immigration Service).

Alien sworn.

The examining inspector then made the following statement to the alien:

"I show you, and ask you to read, a warrant issued by the Hon. Secretary (or Acting Secretary) of Labor of the United States for your arrest, to afford you an opportunity to show cause why you should not be deported from the United States for the reasons set forth in the warrant and any other reasons which may appear as your hearing proceeds."

The warrant was then offered to the alien for his (or her) inspection.

By examining inspector:

Q. Have you read the warrant and do you fully understand the nature of this proceeding?

A. Yes.

Q. You are advised that you have the right to be represented by counsel at this hearing. Do you wish to be so represented?

A. Yes.

Q. (If foregoing question is answered in the affirmative.) Who is your attorney?

A. Otto Christensen.

To attorney :

Q. Do you represent this alien and are you ready to proceed with this hearing at this time?

A. Yes.

Q. (If alien does not wish to be represented by counsel). Do you waive all right to counsel and are you ready to proceed with the hearing at this time?

A. ——.

149 The alien was then duly sworn and gave the following testimony:

Q. What is your full, true and correct name?
A. William Moran.
Q. By what other names have you been known?
A. None.
Q. What is your complete address?
A. Federal Prison, Leavenworth, Kansas.
Q. What is your occupation?
A. Carpenter.
Q. Can you read and write?
A. Yes.
Q. Are you married or single?
A. Single.
Q. (If married.) What is the name and address of your husband (or wife)?
A. ——.
Q. Are you dependent upon your husband (or wife) for support?
A. ——
Q. Are they dependent upon you for support?
A. ——.
Q. If you are deported what provision will be made for other member of family?
A. ——.
Q. What personal property have you?
A. None. Did have some when I was arrested; they managed to "go South with it". (Meaning taken from his possession.)
Q. When and where were you born (Municipality, county or province, country)?
A. South Australia, Port Augusta.
Q. Of what country are you a citizen at the moment of this hearing?
A. Australia.
Q. On what do you base your claim to such citizenship?
A. Birth.
Q. Have you declared your intention to become a citizen of the U. S.
A. No.
Q. Where was your father born?
A. ——.
Q. Has he been naturalized as a citizen of the United States? If so when and where?
A. ——.
—. Where was your husband born?
A. ——.
Q. Where was your husband's father born?
A. ——.

150 Q. Have either of them been naturalized as citizen- of the United States? If so when and where?
A. ——.

Q. When did you last enter the United States and where? Give full details of time, place and manner of entry. (Compare alien with verification of landing.)

A. Early part of 1907—New York; don't know ship.

Q. If you entered from Canada, following arrival from country other than the United States, give time and place of landing in Canada; name of Steamer; were you (or your father *of* your husband) naturalized as a citizen of Canada, and if so give name of court, date and place; give name and addresses of place- where you worked and lived in Canada, and names and addresses of people who can satisfy Canadian Immigration Officials that you resided in Canada from date of landing there to date of departure. (Get full information.)

A. ——.

Q. Have you resided here continuously?

A. Yes.

Q. You did not enter from Australia?

A. No made round about trip.

Q. Did you ever live in the United States prior to your last entry if so when and where?

A. ——.

Q. Have you a passport? (Attach copy to record *of* quote in full in record.)

A. No.

Q. Give names and addresses of relatives abroad to whom you wish to go if deported.

A. They reside in Port Augusta; don't know whether they are still there or not. Cannot give names and addresses.

Description.

Age, 39; Height, 5 ft. 10 in.; Weight, 185; forehead, high; Eyes, Blue; Mouth, Small; Chin, Round; Hair, Light; Complexion, Fair; Face, thin; Nose, Ordinary; Marks: Mustache.

151 Q. You were tried in the United States District Court before Judge Landis for a violation of Federal Law, and sentenced to prison at Leavenworth?

A. Yes.

Q. You are now serving that sentence here?

A. Yes.

I introduce in evidence and make a part of the record of this hearing—"Indictment of William D. Haywood, et al. on Sections 6, 19 and 37 of the Criminal Code of the U. S. and Section 4 of the 'Espionage Act' of June 15, 1917. Number of said indictment is 6125." (Marked Exhibit "A.")

I introduced in evidence and make a part of the record of this hearing—certified copy of the judgment of said United States District Court before Honorable Judge Landis in the case of "The United States vs. William D. Haywood, et al., No. 6125." (Marked Exhibit "B.")

I introduce in evidence and make a part of the record of this hearing—the Opinion and Judgment of the United States Circuit Court of Appeals in the case of "William D. Haywood, et al., Plaintiffs in Error, vs. United States of America, Defendant in Error." (Marked Exhibit "C.")

Q. Mr. Christensen, have you any questions you desire to ask the alien?

A. I have no questions to ask, and as to Exhibits A, B and C, I will reserve my objections to these exhibits to the time of filing my brief and in the brief designate my objections pursuant to the rules; and I advise my client not to answer any further questions.

Inspector Paul to Alien:

Q. The attorney advises you to refuse to answer any further questions; upon advice of counsel, do you refuse to answer any further questions?

A. Yes, sir.

Inspector Paul to Attorney Christensen:

Q. Mr. Christensen, the appeal from the United States District Court to the Circuit Court is not a certified copy of the Opinion of the Circuit Court; do you waive the certification and permit its introduction?

A. I do. I have read — and it is a true copy.

That is all.

152 The following are Exhibits A, B and C, mentioned in the above stipulation:

153 EVIDENCE: GOVERNMENT EXHIBIT A.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 6125.

THE UNITED STATES OF AMERICA

vs.

WILLIAM D. HAYWOOD et al.

Indictment on Sections 6, 19 and 37 of the Criminal Code of the United States and Section 4 of the "Espionage Act" of June 15, 1917.

154 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division, of the September Term, in the Year 1917.

First Count.

(Section 6 of the Criminal Code.)

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the September Term thereof in the year nineteen hundred and seventeen, and inquiring for that division and district, upon their oath present, that throughout the period of time from the sixth day of April, 1917, to the day of the finding and presentation of this indictment, the United States has been at war with the Imperial German Government; and that during said period of time Olin B. Anderson, Aurelio Vincente Azuara, Charles Ashleigh, John Avila, Carl Ahlteen, George Andreychine, Joe Barick, Charles Bennett, Arthur Boose, John Baldazzi, George Bailey, Jimmy Burch, Roy A. Brown, R. J. Bobba, Richard Brazier, Dan Buckley, Julio Blancoe, Nick Berbore, otherwise called Verbanoc, J. R. Baskett, G. J. Bourg, J. H. Byer, Stanley J. Clark, McGregor Cole, Ed. Cunningham, Pedro Cori, Ernest D. Condit, Ray Cordes, Ralph H. Chaplin, Rogers S. Culver, Alexander Cournos, Arthur C. Christ, J. T. Doran, E. F. Doree, Pete Dailey, C. W. Davis, Stanley Dembicki, James Elliott, Joseph J. Ettor, Forrest Edwards, Phineas Eastman, B. E. Fabio, Meyer Friedkin, John M. Foss, Joe Foley, Ben Fletcher, Elizabeth Gurley Flynn, Ray S. Fanning, Ted Fraser, Sam Fisher, J. Fishbein, Peter Green, H. A. Giltner,
155 Joe Graber, C. R. Griffin, Fred Goulder, Charles Garcia, Joseph J. Gordon, W. A. Gourland, otherwise called M. Merlett, Harrison George, Jack Gavell, Arturo Giovannitti, James Gilday,

Ed Hamilton, Clyde Hough, F. Humphrey, William D. Haywood, George Hardy, Harrison Haights, Dave Ingar, C. A. Jones, Ragner Johannsen, Fred Jaakkola, Otto Justh, Charles Jacobson, Charles R. Jacobs, Peter Kerkenon, Charles Kratzpiger, Ph. Kurnisky, otherwise called Kerinsky, William Kornuk, Ben Klein, H. F. Kane, James Keenan, A. D. Kimball, Jack Law, Leo Laukki, Vladimir Lossieff, —— Lenikas, W. H. Lewis, Burt Lorton, Harry Lloyd, Morris Levine, Charles L. Lambert, H. H. Munson, —— Mowess, William Moran, James H. Manning, Herbert Mahler, A. Martinez, otherwise called Angel Martinez, John Martin, Edward Mattson, Herbert Mahler, W. E. Mattingly, Francis Miller, Joe McCarty, Charles McWhirt, H. E. McGucken, Pete McEvoy, Herbert McCutcheon, otherwise called E. J. McCosham, Charles H. MacKinnon, J. A. MacDonald, Walter T. Nef, Pietro Nigri, George Nimcoff, Fred Nelson, V. V. O'Hair, Joseph A. Oates, Paul Piki, Louis Parenti, Grover H. Perry, Albert B. Prashner, John Pancner, James Phillips, Charles Plahn, Walter Reeder, Abraham Rodriguez, Glen Roberts, Fred C. Ritter, Frank Reilly, Frank Russell, Manuel Rey, J. E. Rogers, James Rowan, Charles Rothfisher, Herman Reed, C. H. Rice, Ed Rowan, Siegfried Stenberg, George Stone, otherwise called Lowenstein, Alton E. Soper, Walter Smith, Ben Schrader, George Speed, Joseph Schmidt, Archie Sinclair, Sam Scarlett, Vincent St. John, William Shorey, Abe Schram, Don Sheridan, F. P. Sullivan, James Slovik, otherwise called James M. Slovick, William Tanner, John I. Turner, Louis Tori, Harry Trotter, James P. Thompson, Carlo Tresca, Joe Usapiet, Albert Wills, John Walsh, Ben H. Williams, Frank Westerlund, Pierce C. Wetter, R. F. Wright, William Weyh, William Wiertola and Salvatore Zumpano (Christian names being unknown
156 where not given), hereinafter called defendants, at the City of Chicago, in said Eastern Division of said Northern District of Illinois, unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Frank H. Little, now deceased, and with divers other persons to said grand jurors unknown, by force to prevent, hinder and delay the execution of certain laws of the United States, to wit:

1. The joint resolution of the Senate and House of Representatives, dated April 6, 1917, "That the state of war between the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared;"

2. The Proclamation and Regulations of the President of the United States, dated April 6, 1917, governing the conduct, treatment and disposition of alien enemies within the United States, made pursuant to Sections 4067, 4068, 4069 and 4070 of the Revised Statutes of the United States;

3. The Act of Congress approved June 3, 1916, and entitled "An Act For making further and more effectual provision for the national defense, and for other purposes;" special reference being had to the provisions of said act concerning enlistments and service in the several branches of the military forces of the United States, and the purchase, procurement and manufacture of military supplies and equipment in the time of actual or imminent war;

4. The Act of Congress approved July 6, 1916, entitled "An Act Making appropriations for fortifications and other works of defense, for the armanent thereof, for the procurement of heavy ordnance for trial and service, and for other purposes;" special reference being had to the provsions of said act concerning the purchase and procurement of supplies, materials and articles for the purposes mentioned in said Act;

5. The Act of Congress approved August 29, 1916, en-
157 titled "An Act Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes;" special reference being had to the provisions of said act for the hiring of labor, the procuring of coal and other fuel, the procuring, producing and constructing of aircraft, ordnance, armor, ammunition, torpedoes and torpedo nets, the construction and repair of vessels, construction plants, navy yards, docks, naval magazines, storehouses, training stations, gun factories, projectile plants, radio stations, armor plants, machinery plants and machinery, and concerning enlistment and service in the several branches of the naval service of the United States;

6. The Act of Congress approved August 29, 1916, entitled "An Act Making appropriations for the support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes;" special reference being had to the provisions of said act concerning the purchase of subsistence supplies, clothing and camp and garrison equipage, horses, medical and hospital supplies, equipment and ammunition for the Army of the United States, and concerning the transportation of the Army and its supplies, the construction and repair of hospitals and of buildings for the shelter of troops, animals and stores;

7. The Act of Congress approved April 17, 1917, entitled "An Act Making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and prior fiscal years, and for other purposes;" special reference being had to the provisions of said act concerning the purchase of subsistence supplies, ordnance stores, quartermaster stores, clothing and camp and garrison equipage, and concerning the transportation of the Army of the United States, and of the supplies therefor;

8. The Act of Congress approved May 18, 1917, and en-
158 titled "An Act To authorize the President to increase temporarily the Military Establishment of the United States;" the Proclamation of the President of the United States, dated May 18, 1917, setting the time for registration under said act; the Registration Regulations prescribed by the President of the United States, under authority of said act, on May 18, 1917, and the Rules and Regulations for Local and District Boards, prescribed by the President of the United States on June 30, 1917, under the authority of said act; special reference being had to the provisions of said act, proclamation and regulations for the registration, selection and draft of persons available for military service;

9. The Act of Congress approved June 15, 1917, entitled "An Act making appropriations to supply urgent deficiencies in appropria-

tions for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes;" special reference being had to the provisions of said act concerning the purchase, equipment and repair of field electric telegraph, radio installations, signal equipments and stores, the purchase, manufacture and repair of airships and other aerial machines, the construction of buildings for the Aviation Section of the Army, of barracks, quarters, stables, storehouses, magazines, office buildings, sheds and shops for the use and shelter of the Army, of fortifications and other works of defense and their armament, concerning the purchase of subsistence supplies for the Army and regular supplies of the Quartermaster Corps of the Army, the transportation of the Army and its supplies, the purchase of materials for and the manufacture of clothing and camp and garrison equipage, the purchase of horses, medical and hospital supplies, pontoon material, ordnance, ordnance stores, ammunition, rifles, motor cars, antiaircraft guns, and submarine mines and nets, for the Army of the United States, and concerning the procuring of ordnance
159 material and supplies, armament of ships, ammunition, fuel and medical supplies for the Navy of the United States, the purchase of machinery, boats, vessels, clothing, provisions and stores for the Navy, and concerning the employment of labor for carrying out the purposes of said act;

10. The Act of Congress approved July 24, 1917, entitled "An Act to authorize the President to increase temporarily the Signal Corps of the Army and to purchase, manufacture, maintain, repair and operate airships, and to make appropriations therefor, and for other purposes;" special reference being had to the provisions of said act concerning the purchase, manufacture and repair of airships, the construction and repair of barracks, quarters, hospitals, mess houses, administration, instructional and recreational buildings, hangars, magazines, storehouses, sheds, shops, garages, boathouses, docks, radio stations, laboratories and observation stations, and the purchase of heating and cooking apparatus, gasoline, oil, fuel, supplies, clothing and wearing apparel, for aviation stations under the War Department;

11. The Act of Congress approved June 16, 1917, and entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes;" special reference being had to the provisions of said act concerning the prosecution and punishment of persons willfully causing or attempting to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructing the recruiting or enlistment service of the United States, to the injury of the service or of the United States, or harboring or concealing persons who they know, or have reasonable grounds to believe or suspect, have committed, or are about to commit, offenses under Title I, of said act; and
160 to the provisions of said act concerning the prosecution and punishment of persons using or attempting to use the mails

or Postal Service of the United States for the transmission of matter declared by Title XII of said act to be unmailable, and especially of letters, writings, circulars, postal cards, pictures, prints, engravings, photographs, newspapers, pamphlets, books, and other publications advocating or urging forcible resi-tance to the laws of the United States pertaining to the carrying on of said war against the Imperial German Government;

12. The following sections of the Act of Congress approved March 4, 1909, and entitled "An Act to codify, revise, and amend the penal laws of the United States;" to wit: 4, 19, 21, 37, 42, 43, 135, 136, 140 and 141.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before said period of time there existed, and throughout said period there has existed, a certain organization of persons under the name of Industrial Workers of the World, commonly called "I. W. W.'s," the "One Big Union," and "O. B. U.;" that said organization, during said period, has been composed of a large number of persons, to wit, two hundred thousand persons, distributed in all parts of the United States, being almost exclusively laborers in the many branches of industry necessary to the existence and welfare of the people of the Untied States and of their government, among others the transportation, mining, meat-packing, canning, lumbering and farming industries, and the live-stock, fruit, vegetable and cotton raising industries; that said defendants, during said period have been members of said organization and among those known in said organization as "militant members of the working class" and "rebels," holding various offices, employments and agencies therein; and that, in their said membership, offices, employ-
161 ments and agencies, said defendants, during said period of time, with the special purpose of preventing, hindering and delaying the execution of said laws, severally have been actively engaged in managing and conducting the affairs of said association, propagating its principles by written, printed, and verbal exhortations, and accomplishing its objects, which are now here explained, and thereby and in so doing, during said period, throughout the United States and in said division and district, have engaged in, and have attempted to accomplish, and in part have accomplished, the objects of the unlawful and felonious conspiracy aforesaid.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said organization, before and during said period of time, has been one for supposedly advancing the interests of laborers as a class (by members of said organization called "the workers" and "the proletariat"), and giving them complete control and ownership of all property, and of the means of producing and distributing property, through the abolition of all other classes of society (by the members of said organization designated as "capitalists," "the capitalistic class," "the master class," "the ruling class," "exploiters of the workers," "bourgeois," and "parasites"); such abolition to be accomplished not by political action or with any regard for right or wrong but by the continual and persistent use and employment of unlawful, tortitious and forcible means and

methods, involving threats, assaults, injuries, intimidations and murders upon the persons, and the injury and destruction (known in said organization as "sabotage," "direct action," "working on the job," "wearing the wooden shoes," "working the sab-cat," and "slowing-down tactics"), of the property of such other classes, the forcible resistance to the execution of all laws, and finally the forcible revolutionary overthrow of all existing governmental authority, in the United States; use of which said first-mentioned means and methods was principally to accompany local strikes, industrial strikes,
162 and general strikes of such laborers, and use of all of which said means and methods was to be made in reckless and utter disregard of the rights of all persons not members of said organization, and especially of the right of the United States to execute its above-enumerated laws, and with especial and particular design on the part of said defendants of seizing the opportunity presented by the desire and necessity of the United States expeditiously and successfully to carry on its said war, and by the consequent necessity for all laborers throughout the United States in said branches of industry to continue at and faithfully to perform their work, for putting said unlawful, tortious and forcible methods for accomplishing said object of said organization into practice, said defendants well knowing, as they have, during said period, well known and intended, that the necessary effect of their so doing would be, as it in fact has been, to hinder and delay and in part to prevent the execution of said laws above enumerated, through interference with the production and manufacture of divers articles, to wit, munitions, ships, fuel, subsistence supplies, clothing, shelter and equipment, required and necessary for the military and naval forces of the United States in carrying on said war, and of the materials necessary for such manufacture, and through interference with the procurement of such articles and materials, by the United States, through purchases, and through orders and contracts for immediate and future delivery thereof, between the United States and persons, firms and corporations too numerous to be here named (if their names were known to said grand jurors), and through interference with and the prevention of the transportation of such articles and of said military and naval forces; and that said organization, as said defendants during said period of time have well known and intended, has also been one for discouraging, obstructing and preventing the prosecution by the United States of said war between the United States and the Imperial German Government and preventing, hindering and delaying
163 the execution of said laws above enumerated, by requiring the members of said organization available for duty in said military and naval forces to fail to register, and to refuse to submit to registration and draft, for service in said military and naval forces, and to fail and refuse to enlist for service therein, and by inciting others so to do, notwithstanding the requirements of said laws in that behalf and notwithstanding the patriotic duty of such members and others so to register and submit to registration and draft, and so to enlist, for service in said military and naval forces, and notwithstanding the cowardice involved in such failure and refusal; which last-

mentioned object of said organization was also to be accomplished by the use of all the means and methods aforesaid as a protest against, and as a forcible means of preventing, hindering and delaying, the execution of said laws of the United States, as well as by the forcible rescue and concealment of such of said members as should be proceeded against under those laws for such failure and refusal on their part, or sought for service or for enlistment and service in said military and naval forces.

Overt Acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing said unlawful and felonious conspiracy, combination, confederation and agreement, certain of said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, have done certain acts; that is to say:

1. Said William D. Haywood, Ralph H. Chaplin, Francis Miller, Charles L. Lambert, Richard Brazier and William Wiertola, on April 7, 1917, at Chicago aforesaid, in said division and district, caused to be printed, in the issue of the newspaper Solidarity of that date the following:

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Preamble.

Industrial Workers of the World.

The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among the millions of working people and the few, who make up the employing class have all the good things of life.

Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system.

We find that the centering of management of industries into fewer and fewer hands makes the trade unions unable to cope with the ever growing power of the employing class. The trade unions foster a state of affairs which allows one set of workers to be pitted against another set of workers in the same industry, thereby helping defeat one another in wage wars. Moreover, the trade unions aid the employing class to mislead the workers into the belief that the workers have interests in common with their employers.

These conditions can be changed and the interest of the working class upheld only by an organization formed in such a way that all its members in any one industry, or in all industries, if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making an injury to one an injury to all.

Instead of the conservative motto, "A fair day's wage for a fair day's work," we must inscribe on our banner the revolutionary watchword, "Abolition of the wage system."

It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only

for the every day struggle with capitalists, but to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.

2. Said William D. Haywood, on August 13, 1917, at Chicago, in said division and district, sent the following letter to The Workers Socialist Publishing Bureau at Duluth, Minnesota; that is to
165 say (omitting the printed letter head, the complimentary close, and the signature thereof):

August 13th, '17.

The Workers Socialist Pub. Bureau
Duluth, Minn.

FELLOW-WORKERS:

Yours of the 12th inst. relative to the translating into Finnish of the I. W. W. literature, and asking for my opinion as to which would be best to translate, received and the same noted with care.

In reply will say I am sending you under separate cover an assortment of our literature which may be of use to you in this work.

As to which I recommend, will say that I think "Sabotage" by Pouget and the "Advancing Proletariat" by Woodruff, are two exceptionally fine books that should be translated, on the others, I believe you can use your own judgment.

I trust that the work of translation will be carried out, as it is a necessary and valuable work, that must be done sooner or later.

I note what you say in regard to the General Strike of the Iron Miners, and I am hoping for a speedy victory for them.

3. Said William D. Haywood, on August 13, 1917, at Chicago aforesaid, in said division and district, sent, by some means of transportation to said grand jurors unknown, to the Workers Socialistic Publishing Bureau, at Duluth, Minnesota, a copy of a book by Emile Pouget, entitled "Sabotage", containing, among other things, the following matters in print; that is to say:

Pages 11 and 12. "Of all the words of a more or less esoteric taste which have been purposely denaturalized and twisted by the capitalist press in order to terrify and mystify a gullible public, 'Direct Action' and 'Sabotage' rank easily next to anarchy, Nihilism, Free Love, Neo-Malthusianism, etc., in the hierarchy of infernal inventions.

To be sure, the capitalist class knows full well the exact meaning of these words and the doctrines and purposes behind them, but it is,
of course, its most vital interest to throw suspicion on and
166 raise popular contempt and hatred against them as soon as they begin to appear and before they are understood, for the purpose of creating an antagonistic environment to them and thus check the growth of their propaganda.

American Capitalism having succeeded in making the word Anarchism synonymous with disorder, chaos, violence and murder in the popular mind—with the complicity of the cowardly silence of so-called revolutionists—it is now the turn of Syndicalism, Direct

Action and Sabotage to be equally misrepresented, lied about and defamed."

Pages 13 and 14. "A. Any conscious and wilful act on the part of one or more workers intended to slacken and reduce the output of production in the industrial field, or to restrict trade and reduce the profits in the commercial field, in order to secure from their employers better conditions or to enforce those promised or maintain those already prevailing, when no other way of redress is open.

B. Any skillful operation on the machinery of production intended not to destroy it or permanently render it defective, but only to temporarily disable it and to put it out of running condition in order to make impossible the work of scabs and thus to secure the complete and real stoppage of work during a strike.

Whether you agree or not, Sabotage is this and nothing but this. It is not destructive. It has nothing to do with violence, neither to life nor to property. It is nothing more or less than the chloroforming of the organism of production, the 'knock-out drops' to put to sleep and out of harm's way the ogres of steel and fire that watch and multiply the treasures of King Capital."

Pages 20 and 21. "This booklet is not written for capitalists nor for the upholders of the capitalist system, therefore it does not purpose to justify or excuse Sabotage before the capitalist mind and morals.

Its avowed aim is to explain and expound Sabotage to the working class, especially to that part of it which is revolutionary in aim if not in method, and as this ever-growing fraction of the proletariat has a special mentality and hence a special morality of its own, this introduction purports to prove that Sabotage is fully in accordance with the same."

Pages 22 and 23. "Let us therefore consider Sabotage under its two aspects, first as a personal relaxation of work when wages and conditions are not satisfactory, and next as a mischievous
167 tampering with machinery to secure its complete immobilization during a strike. It must be said with especial emphasis that Sabotage is not and must not be made a systematic hampering of production, that it is not meant as a perpetual clogging of the workings of industry, but it is a simple expedient of war, to be used only in time of actual warfare with sobriety and moderation, and to be laid by when the truce intervenes. Its own limitations will be self-evident after this book has been read, and need not be explained here.

The first form of Sabotage, which was formerly known as Go Cannie, as Mr. Pouget tells us, consists purely and simply in 'going slow' and 'taking it easy' when the bosses do the same in regard to wages."

Pages 26 and 27. "This is not the case with the other kind of Sabotage. Here we are confronting a real and deliberate trespassing into the bourgeois sanctum—a direct interference with the boss's own property. It is only under this latter form that Sabotage becomes essentially revolutionary; therefore, to justify itself, it must

either create its own ethics (which will be the case when it is generally practiced), or borrow it from the Socialist philosophy. Mr. Pouget extensively dwells on this subject, therefore I leave it to him to explain the importance of Sabotage during a strike. I only want to ethically justify it before the tribunal of respectable Socialists. Now, it is the avowed intentions of both Socialists and Industrial Unionists alike to expropriate the bourgeoisie of all its property, to make it social property.

Now may we ask if this is right? Is this moral and just? Of course, if it be true that labor produces everything, it is both moral and just that it should own everything. But this is only an affirmation—it must be proven. We Industrial Unionists care nothing about proving it. We are going to take over the industries some day, for three very good reasons: Because we need them, because we want them, and because we have the power to get them. Whether we are 'ethically justified' or not is not our concern. We will lose no time proving title to them beforehand; but we may, if it is necessary, after the thing is done, hire a couple of lawyers and judges to fix up the deed and make the transfer perfectly legal and respectable. Also, if necessary, we will have a couple of learned bishops to sprinkle holy water on it and make it sacred. Such things can always be fixed—anything that is powerful becomes in due course of time righteous, therefore we Industrial Unionists claim that the Social revolution is not a matter of necessity plus justice but simply necessity plus strength."

Pages 30 and 31. "We admit that our attitude is indefensible before the capitalist code of ethics, but we fail to see how it can be consistently condemned by those who claim the capitalist system to be a system of exploitation, robbery and murder.

We can't possibly understand how it is possible that we are fully entitled to all we produce and then are not entitled to a part of it."

Page 71. "Now, plain common sense suggests that, since the boss is the enemy of the worker, the latter by preparing an ambush for his adversary, does not commit a bad or disloyal act. It is a recognized means of warfare, just as admissible as open and face to face battle."

Page 75. "In truth Sabotage is to the social war what guerrillas are to national wars. It arises from the same feelings, answers to and meets the same necessities and bears the same identical consequences on the workers' mentality."

Page 92. "Up to this point we have examined the various methods of Sabotage adopted by the working class without a stoppage of work and without abondoning the shop and factory. But Sabotage is not confined to this—it may become and is gradually becoming a powerful aid in case of strike."

Pages 94 and 95. "Is a strike contemplated by the most indispensable workers—those of the alimentary trades? A quart of kerosene or other greasy and malodorous matter poured or smeared on the level of an oven * * * and welcome the scabs and scabby soldiers who come to bake the bread! The bread will be uneatable because the stones will give the bread for at least a month the

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foul odor of the substance they have absorbed. Results: A useless oven.

" 'Is a strike coming in the iron, steel, copper or any other mineral industry?

" 'A little sand or emery powder in the gear of those machines which like fabulous monsters mark the exploitation of the workers, and they will become palsied and useless.

" 'The iron ogre will become as helpless as a nursling and with it the scab. * * *' "

A. Renault, a clerk in the Western Railroad, has touched 169 on the same argument in his volume 'Syndicalism in the Railroads,' an argument which cost him his position at a trial in which the commission acted as a court martial. 'To be sure of success,' explained Renault, 'in case that all railroad workers do not quit their work at once—it is indispensable that a strategem of which it is useless to give here the definition be instantaneously and simultaneously applied in all important centers as soon as the strike is declared.

'For this it would be necessary that pickets of comrades determined to prevent at any cost the circulation of trains be posted in every important center and locality. It would be well to choose those workers amongst the most skilled and experienced, such as could find the weak points offhand without committing acts of stupid destruction, who by their open eyed, cautious and intelligent action as well as energetic and efficacious skill, would by a single stroke disable and render useless for some days the material necessary to the regular performance of the service and the movement of the trains. It is necessary to do this seriously. It is well to reckon before hand with the scabs and the military. * * *' "

Pages 96 and 97. "As Bousquet and Renault have remarked, the strikers have not only to reckon with the scabs, they must also mistrust the army. In fact, the habit of replacing the strikers with the soldiers is becoming more and more systematic. Thus, in a strike of makers, electricians, railroad workers, etc., the government immediately steps in to cut its sinews and break it by having the military take the place of the rebellious workers, and the practice has reached such an extent that to thoroughly systematize it the government in the case of electricians has specialized a division of the signal corps to the running of the power houses and the handling of machinery moved by electricity—and the soldiers are always ready to 'report for duty' at the first symptoms of a strike in the electrical industry. It is consequently evident that if the strikers who are aware of the government intentions, should fail, before stopping work, to carry and foil the thrust of military intervention by making it impossible and ineffective—they would lose their fight at its very inception."

4. Said William D. Haywood, Ralph H. Chaplin, Francis Miller, Charles L. Lambert, Richard Brazier and William Wiertola, 70 on August 11, 1917, at Chicago aforesaid, in said division and district, caused to be printed, in the issue of the news-

paper Solidarity of that date, among other things, the following matters, to wit:

Page 5, column 1. "But the I. W. W. is more than a labor organization. It is a revolutionary union and the very word revolutionary presupposes something radically different from former concepts of what constitutes labor unions.

We Are Dissatisfied.

A revolutionary body testifies to complete dissatisfaction with the existing order of things. And this is the first reason and main reason for the existence of the I. W. W. We are absolutely and irrevocably dissatisfied with the present system of society. We consider it a useless system and we mean to destroy it."

5. Said William D. Haywood, Ralph H. Chaplin, Francis Miller, Charles L. Lambert, Richard Brazier and William Wiertola, on July 7, 1917, at Chicago aforesaid, in said division and district, caused to be printed, in the issue of the newspaper Solidarity of that date, among other things, the following matter, to wit:

Page 2, column 2. "Capitalism is a hydra with many heads. War is but one of them; governmental repression is but one of them; religion is one of them, and the prostituted press one of them. If the working class had the power to cut off any one of these heads it would have the power to kill the monster outright. It is the historic mission of the working class to do away with the Beast, for there is no longer room on the earth for both Capitalism and the producing class.

Irresistible Progress now demands that the workers take possession of the world and all that is in it. The Beast stands in the way of further advancement. That is the reason the beast must go, just as the atlantosaur went—to make way for a form of life more fitted to survive. And, in this struggle for final survival, the odds are all on the side of the workers of the world, for they are the producers of all that the world needs for its comfort and health. Capitalism, on the contrary, has become purely parasitical, and Progress will
171 penalize social parasitism with social extinction." * * *

"And the workers, and the workers alone, will give to this Nightmare of the Ages its final coup de grace. They will do this either by tearing open these arteries with the talons of sabotage or piercing its rotten heart with the Sigurd blade of Industrial Solidarity.

But the Beast must perish. Kismet!"

6. Said William D. Haywood, Ralph H. Chaplin, Francis Miller, Charles L. Lambert, Richard Brazier and William Wiertola, on August 18, 1917, at Chicago aforesaid, in said division and district, caused to be printed, in the issue of the newspaper Solidarity of that date, among other things, the following matter, to wit:

Page 2, column 2. "One thing, however, our enemies are likely to overlook, and that is the power of the aroused membership in action. It is a mistake to think that the I. W. W. is a loosely knit and easily intimidated organization. The banner of the One Big Union is planted in every industry in every State of the Nation. Red card men are shrewd, determined, valorous and loyal to the cause they love. If they are hounded to desperation they will be a hard proposition to handle. There would not be soldiers enough in the country to round them up for arrest nor jails enough to hold them, once arrested. The I. W. W. is so deeply rooted in America and the world that it can afford to take the chances of an open war a whole lot better than the powers that oppose it.

Stopping the press and closing the doors of our union halls, or even of the General Office, will not stop the work of the One Big Union. It isn't organized that way. The tenets of the creed of One Big Union and the industrial solidarity of Labor are written indelibly upon the hearts of each of our members. Our songs are known to thousands and thousands of workers the world over. Our system of job agitation is such that no power on earth can keep the union and its principles from spreading its influence and increasing its power.

It was the I. W. W. that first showed the world how to fight effectively against great odds. We have shown the world how to go to jail in huge numbers, exasperate the taxpayers and block the machinery of 'justice.' It was the I. W. W. that developed a
172 system of telling tactics to be used in prison yards and rock piles. The 'slow down' plan and mass opposition to unjust regulations would work as well in detention camps in jail—or on the job. The wide-spread knowledge of the effects of punitive sabotage upon modern industry gives the militant portion of the working class the power to stop or disrupt production at will. The membership of the I. W. W. is conscious of its power and knows how to achieve its ends, and is dead game to take whatever measures are necessary in order to do so. The preservation of the One Big Union is essential to the survival of the working class. In fighting for his union the I. W. W. is fighting for himself, and his class. And, self-preservation, like the Copper Trust, knows no law."

7. Said William D. Haywood, Ralph H. Chaplin, Francis Miller, Charles L. Lambert, Richard Brazier and William Wiertola, on August 25, 1917, at Chicago aforesaid, in said division and district, caused to be printed, in the issue of the newspaper Solidarity of that date, the following:

Page 2, column 2. "Anyone with good sense now objects to being told that Czar Wilson is working for the interests of the working class in trying to force them against their wills into the bloody European slaughterfest. The treachery, duplicity and hypocracy of the present administration has done more to remove the time hallowed veneration for political government from the minds of the slaves than anything that has happened in decades. And the indifference of the chief executive of the land to the horror and misery

of the lawless Bisbee deportation and the Butte lynching ha
glory, and the President of these states has stamped the whole sick
ing mess with the seal of his approval.

Political government is now being seen in its true light, as
strike-breaking, stool-pigeoning and labor-crushing bureau of
bourgeoisie. This truth is further demonstrated by the fact t
soldiers are being used to break strikes for the Oligarchs of Invis
government in America before they go to France to collect W
Street's war debts and to save the seas for the tyrannical British
pire. The refusal of American workers to volunteer and their
termined opposition to being drafted into the army demonstra
clearly that war is being recognized by the slave class as a cause
class hatred as they are now doing."

173 8. Said William D. Haywood, Ralph H. Chaplin, Fra
Miller, Charles L. Lambert, Richard Brazier and Willi
Wiertola, on May 26, 1917, at Chicago aforesaid, in said division
district, caused to be printed, in the issue of the newspaper Solida
of that date, the matter following:

Page 2, column 2. "Every war is for gain. How much of
gain do the workers get? Nothing. Who does the dying?
workers. Then, if war is declared, let us, by all means, pull off
general strike to prevent it. What is more simple?"

9. Said William D. Haywood, Ralph H. Chaplin, Francis Mil
Charles L. Lambert, Richard Brazier and William Wiertola, on
12, 1917, at Chicago aforesaid, in said division and district, cau
to be printed, in the issue of the newspaper Solidarity of that d
the following:

Page 2, column 1. "A great real has been said and written ab
conscription by persons who think they are doing their duty
merely condemning it, just as war was condemned in Europe bef
the outbreak of the murderfest. But if we are to profit by the
son learned by our fellow-workers on the Continent at the expe
of millions of lives and untold misery, we must recognize the
that something besides our jaws must be used to thwart the dastar
scheming of the Thieves of Industry to reduce us to a condition
abject and unresisting slavery, and to keep us in that conditi
Therefore it is not so much a question of what Labor is going to
about conscription but what it is going to do about it. And in
regard the I. W. W. has the reputation of saying little and do
a lot.

It is needless to say that the I. W. W. is unalterably opposed to
and conscription. We are convinced that the shedding of blood
the interests of the master class is a stupid and needless act
benefits Labor not at all, that merely makes the rich richer and
poor poorer. We do not see why we should be called upon to
the bloody price of the commercial supremacy of the Industrial Pa
sites of any land. We consider the bombastic and far-fetched t
about Freedom and Democracy simply so much bunk. The o
place we have anything to gain or to defend is on the j
174 Had we the power we would stop every ship, train, mine a
mill, every food and supply plant—every wheel of indust

and thus paralyze the machinery of murder and make it impossible for the ignorant man-killers of the bosses to gather their toll of the life blood of foreign slaves. We would extend the hand of brotherhood to the so-called 'enemy' and strangle the gurgle for war in the fat white throats of the blood bloated money-lenders of Wall Street before it became articulate."

10. Said Phineas Eastman, on May 21, 1917, sent from Augusta, Kansas, to Chicago aforesaid, the following letter (omitting the printed letterhead thereof), to wit:

Wm. D. Haywood, Augusta, Kansas, 5-21-17.
Sec.-Treas. I. W. W.,
Chicago.

FELLOW WORKER:

Enclose you a motion made and carried unanimously here at Business Meeting, May 20-1917.

Yours for Ind. Freedom

Phineas Eastman, Br. Sec. 1146.

P. S.—All members are at sea as to what the members as a whole are going to do in re to Conscription. This motion is to help, in a specific way, to get down to action & put a stop to Speculation. P. E.

Motions made at Business Meeting of Augusta, Kas., Branch, May 20-1917.

"All members of the I. W. W. Resist Conscription, by refusing to join Any Band of Potential Murderers, or by any other effective method deemed advisable. Copies of this motion be sent to Wm. D. Haywood Sec. Treas. I. W. W., and Forest Edwards, Sec. Treas. A. W. O. with the request that these two officials transmit same with Dispatch, to all Unions of the I. W. W. & Delegates in the field.

J. Pujol, Chairman.

11. Said Charles Jacobson, on June 22, 1917, caused to be printed and distributed and posted in public, at Virginia, Crosby and
175 Duluth, in the State of Minnesota, a large number, to wit, two hundred in each of said places, of copies of the following circular, to wit:

"Workers in the Iron Industry.

WORKERS:

Your attention is called to the fact, that in this Land of Liberty, the home of the free, Hundreds of our fellow workers, have been arrested, and thrown into jails that the workers have built, for the reason that they did not register because they know that the constitution of the United States, do not allow any force to be practised on any man under the jurisdiction of the United States, and because they do not believe in wars, and practising for killing their fellow men, for the benefit of few over fed parasites while they themselves are in urgent need of the necessities of life.

You Fellow Workers think this over for a minute in your hea and you will soon see that if we workers do not help ourselves, t master class will not help us. We are here produsing the iron which the war machineries is built from. Thousands of tons of o sweat and blood is sunk into the bottom of the oceans, and millions our fellow men are being killed, and others are wounded for cannon food.

You workers must stop of furnishing the master the material which the war structures are made of, and same time defend our i nocent fellow workers, who believe that they will not murder yo brother or your father, nor destroy your home.

We appeal to your workers of the Iron Industry to prepare for walk out from your jobs, and demand that the imprisoned fello workers are immediately released. Thousands of men in the copp industries in the State of Montana, are on strike already to defend o fellow workers, thousands more will in few days be out in the lumb industry, of the West.

Prepare yourselves miners and all other workers, to go out on stri on the moment's notice. Do not be slaskers to defend your ow class."

12. Said James Rowan, on August 2, 1917, sent the following lett from Seattle, Washington, to Chicago aforesaid, to wit:

176 "Seattle, Wash., August 2, 1917.

William D. Haywood,
Gen. Secy.-Treasurer,
Chicago, Illinois.

FELLOW WORKER:

There has been considerable agitation in Seattle among the lumb mills, ship yards and other industries and the old bugaboo of "p triotism" is being preached on all sides. The Government has bee asked to interfere and it is reported that Government agents here a active.

We have the good will of the German people here and we feel sur that — are in sympathy with our cause. We do not call them Ge mans however but refer to them the same as others, as Fello Workers.

We are going to carry our points if we have to stop every industr on the Pacific Coast. We did not declare war and we have not con sented to the workingman giving up his liberties and being drafted

Yours for industrial freedom,

The Strike Committee

13. Said William D. Haywood, on August 9, 1917, prepared an sent from Chicago aforesaid to Duluth, Minnesota, the following lette (omitting a portion of the printed letter-head), to wit:

"August 9th, 17.

Chas. Jacobson,
Sec'y-Treas. #490,
Duluth, Minn.

FELLOW-WORKER:

Yours of the 6th inst. to hand and the contents of same noted with care.

In reply will say that I note that John Pancner arrived O. K. and that Lambert has not appeared yet, in regard to Lambert he is still in Minneapolis working on the books of 573, and endeavoring to get them straightened, he will be in Duluth as soon as he gets thru there.

Note that the strike at Crosby is on, and that the gunmen broke up the miners' peaceable meeting. I received word from Superior Wis., by wire from Chas. Plahn that he had been deported from Bessemer by 4 masked men in an automobile, beaten up, and told not to return or he would get more and worse.

177 I do not think it policy to send him back there, as he would only get deported again and more brutally treated.

If you can get in touch with him from Duluth tell him not to go back that way, but to come here, unless of course you can use him there anywhere.

I am sending the orders for literature that your letter calls for, as to the Croatian leaflets do not know if there is any left here or not, but will see, and will send all we have to spare.

With best wishes, I remain,

Yours for the O. B. U.,

Wm. D. Haywood, Sec'y-Treas, I. W. W."

14. Said James Rowan, on August 10, 1917, in the State of Washington, caused to be printed and distributed among members of "Local 400" of said organization a printed circular containing, among other things, the following:

"On August 14th the case of our fellow workers in jail at North Yakima will come to trial. Habeas corpus proceedings will be taken in the Federal courts. These men have committed no crime. There are no charges against them. They are simply held in defiance of all constitutional guarantees because they are members of a union and are considered dangerous to the profits of the masters.

Fellow workers, if these men and all other members of our organization in the northwestern states are not turned loose by the 20th, let our answer be a General Strike of all men employed in the harvest fields and the fruit orchards in these states. Let the harvest go to waste and the fruit rot on the ground. If the laws of the country are set aside and the constitution overruled in the interests of a gang of profit hungry pirates then we will have recourse to the court of the working class. By the use of our organized economic power we will force the ruling class to give justice to our members or else the crops of the northwest territory shall be left unharvested."

15. Said William D. Haywood, on September 4, 1917, prepared and sent from Chicago aforesaid to Duluth, Minnesota, the following letter (omitting a portion of the printed letterhead), to wit:

178 Industrial Workers of the World,
1001 W. Madison Street,
Chicago, Ill.

William D. Haywood, General Secretary-Treasurer.

Telephone, Monroe 6228.

Sept. 4th, 17.

Chas. Plahn,
Box 444,
Duluth, Minn.

FELLOW-WORKER:

Yours of the 3rd inst. to hand and the contents of same noted with care.

In reply, will say that I note with sorrow that another lawless mob has got in their dirty work in Bessemer, and I also note that Fellow-worker Rey is in Duluth, and that you will send him around the Range, as he is not known, and you think he will arouse interest.

I note also that Jacobson is not assisting you very much, I wrote him last week to render you every assistance, but have received no reply to the letter I sent him yet.

I think the best way to handle the situation is the best, no use making Jacobson or any of the membership hostile, or anything like that.

In regard to the handling of the Bessemer situation, I note that you are developing a plan that you think will be effective, I hope it will, but do not take any unnecessary risks, if you can avoid them.

Write me further details of the Bessemer affair, and your plan to handle that situation.

With best wishes, I remain, yours for the O. B. U.,
Wm. D. Haywood, Sec'y-Treas. I. W. W.

16. Said William D. Haywood, on September 5, 1917, prepared and sent from Chicago aforesaid to Duluth, Minnesota, the following letter (omitted the printed letter-head), to wit:

"Sept. 5th, 17.

Pietro Nigri,
Duluth, Minn.

FELLOW-WORKER:

Yours of the 1st inst to hand and the contents of same noted with care.

179 In reply will say that I have wrote to Perry to see if he can find room for a good Italian organizer and I have recommended you to him, and I think likely he will be able to place you.

regard to Plahn going up upon the Range, I do not think
se just yet for him to go, as I think he is needed in the office
.

hink for a while we ought to carry on an educational campaign
our literature on the Range, and spread all kinds of leaflets
pamphlets amongst the miners in all languages, and get them
dying our principles, then they will be easier to organize when
ave a chance to send our organizers amongst them again.
oping that you are working on the translations into Italian of
iterature.
emain, with best wishes, yours for the O. B. U.,
Wm. D. Haywood, Sec'y-Treas. I. W. W."

Said William D. Haywood, on the several dates here shown
nnection therewith, sent the following telegrams from Chicago
aid, in said division and district, to the several persons named
in, to wit:

"July 6, 1917.

ates,
. W. W. Hall,
Miami, Ariz.:

od luck to the miners. Entire organization behind them, must
o compromise. I will drop all plans, and be with you. Keep
sted, send all news to the papers. Tell the diggers and muck-
double up on the machine.
Little, Haywood, Charge Industrial Workers
of the World."

"Regular Message.

July 13th, 1917.

ent Wilson,
Washington, D. C.:

re than two thousand men who were dragged from their homes
orcibly deported from Bisbee, Arizona, are adrift on the desert
at Hermanas, New Mexico. These men are miners, useful
citizens, residents of Bisbee, Arizona. The United States can
ill afford to permit these Russianized methods to go unchecked.
mand that these men be cared for and restored to their homes
milies.
Wm. D. Haywood, General Secretary-Treas-
urer Industrial Workers of the World.

. I. W. W ..rt."

Telegram.

"July 26, 1917.

W. H. Lewis,
Box 445,
Miami, Arizona:

Stability of Oates and others to be commended. Situation improves. Miners on strike at Gogebic, Bessemer, Michigan. Northern peninsula and Mesaba range to follow.

Wm. D. Haywood.

Chg. Acct. I. W. W."

"July 26, 1917.

A. D. Kimball,
Executive Committee,
Columbus, New Mexico:

Hanson Arrived. Perry has sent three thousand to Arizona. Best information is families are being provided. Strike is extending Leadville shut down Also Gobebic Range Michigan, Mesaba Minnesota next.

Wm. D. Haywood.

Charge I. W. W."

"July 26, 1917.

Richard Mattson,
530 W. 1st St.,
Duluth, Minn.:

Board member will arrive there shortly. Tell Watson got his wire.

Wm. D. Haywood.

Chg. I/W. W. Acct."

"July 27th, 1917.

President Wilson,
Washington, D. C.:

Miners of Michigan and Minnesota threaten to strike unless miners at Columbus New Mexico are returned to their homes at Bisbee, Arizona. Hours count in this crisis.

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Wm. D. Haywood, General Secretary-Treasurer I. W. W.

Chg. I. W. W. Acct."

"July 30, 1917.

President Wilson,
Whitehouse,
Washington, D. C.:

General Strike of metal miners of Michigan has been declared. Minnesota next. Harvest workers of North and South Dakota will follow unless miners at Columbus New Mexico are returned to their homes and families at Bisbee, Arizona.

Wm. D. Haywood.

Charge I. W. W."

"July 31st, 1917.

C. L. Lambert,
324 Kasota Bldg.,
Minneapolis, Minn.:

Go to Bessemer, Michigan immediately. Strike on. See Jacobson en route.

Wm. D. Haywood.

Chg. I. W. W. Acct."

"August 1st, 1917.

Rose Justh,
299 Erskine St.,
Detroit, Mich.:

Go to Bessemer at once.

Wm. D. Haywood.

Chg. I. W. W. Acct."

"August 2, 1917.

Chas. Plahn,
Fon Du Lac, Wisconsin:

Good organizer needed in Bessemer, Michigan. Use your best judgment about leaving there.

Wm. D. Haywood.

Charge I. W. W.

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"August 3, 1917.

Charles Plahn,
Fon Du Lac, Wis.:

Go to Besember, Michigan. Report at Finn Hall.

Wm. D. Haywood.

Charge I. W. W."

"August 10, 1917.

A. S. Embree,
Columbus, New Mexico:

All money for miners will go to Perry. Strike on Cayuna and Mesaba Range, Minnesota.

Wm. D. Haywood.

Charge I. W. W.

18. Said Grover H. Perry and Charles H. Mackinnon, on July 10, 1917, sent the following telegram from Salt Lake, Utah, to said William D. Haywood at Chicago aforesaid, to wit:

"Salt Lake, Utah, 1116A, Jul. 10-1917.

Wm. D. Haywood,
1001 W. Madison St., Chgo.:

Bisbee wire for funds before twelve o'clock today Feeding thousand Mexicans *baily*. Jerome wires for five hundred. Situation acute. Wire me three thousand dollars today. Waive identification.

Perry-Mack-innon, 596 Boyd Park Bldg."

19. Said Charles Jacobson, on August 4, 1917, sent the following telegram from Duluth, Minnesota, to said William D. Haywood, at Chicago aforesaid, to wit:

"Duluth, Minn., Aug. 4, 1917.

Wm. D. Haywood,
1001 West Madison St., Chicago, Ills.:

Thirty or forty men arrested in Michigan charges conspiracy against the mining companies if there is attorney there that you can send do it Here is copy of a telegram from Slonim about a- attorney in Ironwood only one attorney to handle matter he made following proposition cash retainer five hundred dollars fifty dollars per day in court twenty five per day for work out of court fifty dollars additional retainer if any new case if you decide to retain him send five hundred dollars at once some dope

Chas. Jacobson."

20. Said Harry Lloyd, on August 7, 1917, sent the following telegram from Portland, Oregon, to said William D. Haywood, at Chicago aforesaid, to wit:

"Portland, Ore., 342P., Aug. 7, 1917.

William D. Haywood,
Chgo., Ills.:

All branches of orgon have gone on record for a national general strike ag-inst the despotism of the deportation of the Arizona miners and the cold blooded murder of Little such despotism in a socalled free nation must stop A nation wide strike is the only weapon left in labor's hands The workers of America must fight for industrial democracy On with the national general strike Wire acknowledgment,

Harry Lloyd, Secy

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, during the period of time, at the place and in manner and form, aforesaid, unlawfully and feloniously have conspired by force to prevent, hinder and delay the execution of laws of the United States; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

(Section 19 of the Criminal Code.)

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants named in the first count of this indictment, throughout the period of time from April 6, 1917, to the day of the finding and presentation of this indictment, at said City of Chicago, in said Eastern Division of said Northern District of

Illinois, unlawfully and feloniously have conspired together,
184 and with one Frank H. Little, now deceased, and with divers other persons to said grand jurors unknown, to injure, oppress, threaten, and intimidate a great number of citizens of the United States in the free exercise and enjoyment by them respectively of a certain right and privilege secured to them by the Constitution and laws of the United States, the names and the number of which said citizens are to said grand jurors unknown, but which said citizens can only be and are by said grand jurors generally described as being the class of persons, mentioned in the first count of this indictment, who during said period of time have been furnishing and endeavoring to furnish, to the United States, in pursuance of sales, orders and contracts between them and the United States, munitions, ships, fuel, subsistence supplies, clothing, shelter and equipment, necessary for the military and naval forces of the United States in carrying on its war with the Imperial German Government in said first count referred to, materials necessary for the manufacture of those articles, and transportation of said articles and materials and of said military and naval forces, all required and authorized to be procured by the United States from such persons and citizens under the several laws of the United States specifically mentioned in said first count as being the laws of which said defendants are charged in said count with conspiring to prevent, hinder and delay the execution; that is to say, the right and privilege of furnishing, to said United States, without interference, hinderance or obstruction by others, said articles, materials and transportation; which said conspiracy in this count mentioned has been one for injuring, oppressing, threatening and intimating said citizens by interfering with, hindering and obstructing them in the free exercise and enjoyment of said right and privilege by and through the continued and persistent use and employment, by said defendants, under the circumstances and conditions in said first count described, of the unlawful and tortious
185 means and methods in that count set forth as the means and methods of accomplishing the objects of the unlawful and felonious conspiracy in that count charged against said defendants; the allegations of which said count in that behalf and concerning the existence, character and objects of the organization, called "Industrial Workers of the World" and "I. W. W.'s," in said count mentioned, concerning the membership, offices, employment and agencies of said defendants in that organization, and concerning said unlawful and tortious means and methods, are incorporated in this count of this indictment by reference to said first count as fully as if they were here repeated.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing said unlawful and felonious conspiracy in this count charged, certain of said defendants have done the several acts described in said first count under the heading of "Overt Acts," at the several times and places there stated.

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Third Count.

(Section 37 of the Criminal Code in Connection with Section 332 of the Criminal Code, Section 5 of the Act of May 18, 1917, and Article 58 of the Articles of War in the Act of August 29, 1916.)

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that throughout the period of time from May 18, 1917, to the day of the finding and presentation of this indictment, the United States has been at war with the Imperial German Government; and that continuously throughout said period of time said defendants named in the first count of this indictment, at said City of Chicago, in said Eastern Division of said Northern District of Illinois, then being members of the organization described in
186 said first count, and called "Industrial Workers of the World," "I. W. W.s" the "One Big Union" and "O. B. U.'s", unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Frank H. Little, now deceased, and with divers other persons to said grand jurors unknown, to commit divers, to wit, ten thousand, offenses against the United States; that is to say, ten thousand offenses each to consist in unlawfully aiding, abetting, counseling, commanding, inducing and procuring one of the ten thousand male persons, other members of said organization, who on June 5, 1917, respectively attained their twenty-first birthday and who did not on that day attain their thirty-first birthday, and who have been required by the Proclamation of the President of the United States dated May 18, 1917, to present themselves for and submit to registration, under the Act of Congress approved May 18, 1917, and entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," at the divers registration places in the divers precincts in said Eastern Division of the Northern District of Illinois, and in the divers other precincts in other States of the United States, wherein said persons have by law respectively been required to present themselves for and submit to such registration, whose names, and the designation of which said precincts, are to said grand jurors unknown, unlawfully and willfully to fail and refuse so to present himself for registration and so to submit thereto; none of such persons being an officer or an enlisted man of the Regular Army, of the Navy, of the Marine Corps, or of the National Guard or Naval Militia in the service of the United States, or an officer in the Reserve Corps or an enlisted man in the Enlisted Reserve Corps in active service; and divers, to wit, five thousand, other offenses against the United States, that is to say, five thousand offenses each to consist in unlawfully and feloniously
187 aiding, abetting, counseling, commanding, inducing and procuring one of the five thousand persons, still other members of said organization, who should become subject to the military law of the United States under and through the enforcement of the provisions of the Act of Congress in this count of this indictment above mentioned, and of The Proclamations, Rules and Regulations of the President of the United States made in pursuance of said Act of Con-

gress, and whose names are also unknown to said grand jurors, unlawfully and feloniously to desert the service of the United States in time of war; said defendants not then being themselves subject to military law of the United States.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing said unlawful and felonious conspiracy, combination, confederation and agreement in this count of this indictment charged, certain of said defendants, at the several times and places in that behalf mentioned in connection with their names under the heading "Overt Acts" in the first count of this indictment, have done certain acts; that is to say, the several acts mentioned in said first count under said heading: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fourth Count.

(Section 4 of the "Espionage Act" of June 15, 1917, in Connection with Section 3 of That Act.)

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that throughout the period of time from June 15, 1917 to the day of the finding and presentation of this indictment, the United States has been at war with the Imperial German Government; and that continuously throughout said period of time
188 said defendants named in the first count of this indictment, at said City of Chicago, in said Eastern Division of said Northern District of Illinois, then being members of the organization described in said first count and called "Industrial Workers of the World," "I. W. W.'s," the "One Big Union," and "O. B. U.'s," unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Frank H. Little, now deceased, and with divers other persons to said grand jurors unknown, to commit a certain offense against the United States, to wit, the offense of unlawfully, feloniously and willfully causing and attempting to cause insubordination, disloyalty, and refusal of duty in the military and naval forces of the United States, when the United States was at war; and this through and by means of personal solicitation, of public speeches, of articles printed in certain newspapers called "Solidarity," "Industrial Worker," "A Bermunkas," "Darbininku Balsas," "Il Proletario," "Industrial Unionist," "Rabochy," "El Rebelde," "A Luz," "Alarm," "Solidarnosc," and "Australian Administration," circulating throughout the United States, and of the public distribution of certain pamphlets entitled "War and the Workers," "Patriotism and the Workers" and "Preamble and Constitution of the Industrial Workers of the World," the same being solicitations, speeches, articles and pamphlets persistently urging insubordination, disloyalty and refusal of duty in said military and naval forces and failure and refusal on the part of available persons to enlist therein; and another offense against the United States, to wit, the offense of

unlawfully, feloniously and willfully, by and through the means last aforesaid, obstructing the recruiting and enlistment service of the United States, when the United States was at war, to the injury of that service and of the United States.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing said unlawful and felonious conspiracy, combination, confederation and agreement in this
189 count of this indictment charged, certain of said defendants, at the several times and places in that behalf mentioned in connection with their names under the heading "Overt Acts" in the first count of this indictment, have done certain acts; that is to say, the several acts mentioned in said first count under said heading: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

(Section 37 of the Criminal Code in Connection with Section 215 of the Criminal Code.)

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the defendants in the first count of this indictment named, throughout the period of time from April 6, 1917, to the day of the finding and presentation of this indictment, at said City of Chicago, in said Eastern Division of said Northern District of Illinois, unlawfully and feloniously have conspired, combined, confederated and agreed together, and with one Frank H. Little, now deceased, and with divers other persons to said grand jurors unknown, to commit divers, to wit, twenty, offenses against the United States, that is to say twenty offenses each to consist in placing, and causing to be placed on Saturday of each week, in the post office of the United States at Chicago aforesaid, to be sent and delivered by the post office establishment of the United States, a large number, to wit, fifteen thousand, copies of a certain newspaper called "Solidarity," and one thousand other offenses each to consist in placing, and causing to be placed, in said post office to be sent and delivered by said post office establishment, a large number, to wit, one hundred and fifty, "stickerettes" and one thousand other offenses each to consist in placing and causing to be placed, in said post office,
190 to be sent and delivered by said post office establishment, a copy of some one of the following books, to wit, "Sabotage" by Emile Pouget, and "Sabotage" by Elizabeth Gurley Flynn, all of which publications contained information and advice advocating the commission of the fraudulent practices hereinafter set forth and all of which were for the purpose of executing a certain scheme and artifice to defraud the employers of labor hereinafter mentioned but whose names are to the grand jurors unknown; which was theretofore devised by said defendants:

That said defendants would cheat and defraud out of money, employers of labor throughout the United States, and particularly those employers of labor engaged in the manufacture of munitions and sup-

plies for the United States Army and Navy, and those engaged in furnishing the raw materials out of which said munitions and supplies are made, and those engaged in the transportation of said munitions and supplies and raw materials, by entering or staying in the employ of said employers and receiving and accepting money from said employers for working for them and by procuring other members of the Industrial Workers of the World so to do, when, in fact, said defendants while accepting and receiving said money would secretly and covertly work against said employers and to their injury and detriment and would induce and persuade said other members so to do; that said defendants would demand stated wages under agreements binding them respectively to give their services to their employers in good faith, and would pretend to said employers that they would render efficient services, assist said employers in producing good products and render their services free from intentional injury to their employers, and would induce and persuade said other members so to do; that they would hold said employments and accept said employments with the secret purpose and intention
191 not to render efficient service to said employers and not to produce good products but secretly and covertly to render inefficient service, and to purposely assist in producing bad and unmarketable products and intentionally to retard, slacken and reduce production wherever employed, and intentionally to restrict and decrease the profits of said employers and interfere with and injure their trade and business, and secretly and covertly to injure, break up and destroy the property of said employers; and that they would teach, incite, induce, aid and abet said other members so to do. That as a part of said scheme and artifice, said defendants were to send and deliver by the post office establishment of the United States the newspapers, stickerettes and books aforesaid.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that in and for executing said unlawful and felonious conspiracy, combination, confederation and agreement, said defendants at the several times and places hereinafter mentioned in that behalf, have done certain acts, that is to say:

(1) Said defendants, on Saturday of each week during said period of time, caused to be printed, at Chicago aforesaid, in said division and district, fifteen thousand copies of said newspaper called "Solidarity".

(2) Said William D. Haywood, on May 25, 1917, at Chicago aforesaid, in said division and district, gave an order to Cahill-Carberry & Company, of Chicago, to print and deliver to said William D. Haywood one million of said stickerettes.

(3) Said defendants, on July 25, 1917, caused to be printed, at Chicago aforesaid, in said division and district, one thousand copies of said book called "Sabotage", by said Elizabeth Gurley Flynn.

Against the peace and dignity of the United States, and
192 contrary to the form of the statute of the same in such case made and provided.

Charles F. Clyne, United States Attorney. William C. Fitts, Assistant Attorney General. Frank K. Nebeker, Special Assistant to the Attorney General. Frank C. Dailey, Special Assistant to the Attorney General. Oliver E. Pagan, Attorney, Department of Justice.

(Endorsed:) No. 6125 United States District Court, Northern District of Illinois, Eastern Division. The United States of America vs. William D. Haywood et al. Indictment on Sections 6, 19 and 37 of the Criminal Code of the United States, and Section 4 of the "Espionage Act" of June 15, 1917. A true bill. William H. Rose, Foreman. Filed in open court this 28th day of Sept., A. D. 1917. T. C. MacMillan, Clerk.

193 And afterwards, to wit, on the 17th day of August, A. D. 1918, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

No. 6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

EVIDENCE: GOVERNMENT EXHIBIT "B."

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties by their attorneys, and each and all of the defendants in their own proper persons, come also the jury who were duly elected, empaneled and sworn herein as aforesaid, and the trial of this cause proceeds, and the jury having heard the evidence by the parties adduced, arguments of counsel and charge of the court, retire to their room to consider of their verdict, and afterwards return into Court and render their verdict *verdict*, and upon their oath do say: "We the jury find the defendants, Carl Ahlteen, Olin B. Anderson, George Andreychine, John Avila, Charles Ashleigh, Aurelio Vincente Azuara, John Baldazza, J. R. Baskett, Charles Bennett, R. J. Bobba, Arthur Boose, G. J. Bourg, Richard Brazier, Roy A. Brown, Dan Buckley, J. H. Byers, Ralph H. Chaplin, Stanley J. Clark, Ray Corder, Alexander Cournos, Pete Dailey, C. W. Davis, Edward F. Doree, J. T. Doran, Forrest Edwards, James Elliott, Ray S. Fanning, Ben Fletcher, John M. Foss, Ted Frazer, Meyer Friedkin, Harrison George, Joseph J. Gordon, Norval G. Marlatt, Joe Graber, Peter Green, C. R. Griffin, Ed. Hamilton, George Hardy, William D.

Haywood, Clyde Hough, Dave Ingar, Fred Jaakkola, Charles Jacobs, Charles Jacobson, Ragnar Johannsen, H. F. Kane, Charles L. Lambert, Leo Laukki, Jack Law, M. Levine, W. H. Lewis, Harry Lloyd, Burt Lorton, Vladimir Lossieff, Herbert Mahler, John Martin, James H. Manning, J. A. MacDonald, Charles H. MacKinnon, Joe McCarty, Herbert McCutchen, Pete McEvoy, Charles McWirt, Francis Miller, William Moran, Walter T. Nef, Fred Nelson, Petro Nigra, V. V. O'Hare, Joseph A. Oates, John Pancner, Louis Parenti, Grover H. Perry, James Phillips, Charles Plahn, Albert B. Prashner, Manuel Rey, C. H. Rice, Glen Roberts, Charles Rothfiser, James
194 Rowan, Sam Scarlett, Ben Schrager, Don Sheridan, Archie Sinclair, James Slovik, Vincent St. John, Walter Smith, Anson E. Soper, George Speed, Sigfried Stenberg, William Tanner, James P. Thompson, John I. Turner, Joe Usapiet, John Walsh, Frank Westerlund, Pierce C. Welter, William Weyh, guilty as charged in the indictment, whereupon the defendants by their attorneys enter their motion for a new trial herein, and the defendants are remanded into custody.

195 Saturday, August 17, A. D. 1918.

Present: The Honorable Kenesaw M. Landis, Judge.

No. 6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Come the parties by their attorneys and on motion and for good cause shown, it is ordered by the court that the fifth count of the indictment against the defendants herein be and the same hereby is dismissed.

196 And afterwards, to wit, on the 30th day of August, A. D. 1918, the following order was ha*nd* and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Comes the United States by Charles F. Clyne, Esq., United States Attorney, come also the defendants, J. R. Baskett, R. J. Bobba, Roy A. Brown, George Hardy, Charles Jacobs, Charles Jacobson, Charles McWhirt, Fred Nelson, Walter Smith, Anson E. Soper, George Speed and Ray Corder, in their own proper persons to have

the sentence and judgment of the court pronounced upon them, they having heretofore, to wit, on the 17th day of August, A. D. 1918, been adjudged guilty by a jury in due form of law of the violation of Sections 6, 19 and 37 of the Criminal Code of the United States Section 4 of the "Espionage Act" of June 15, 1917, as charged in indictment filed herein against them, and each of the said defendants being asked by the court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court and is the sentence and judgment of the Court upon the verdict of guilty so rendered by the jury as aforesaid that each of the said defendants, J. R. Baskett, R. J. Bobba, Roy A. Brown, George Hardy, Charles Jacobs, Charles Jacobson, Charles McWhirt, Fred Nelson, Walter Smith, Anson E. Soper, George Speed, and Ray Corder, be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas, for and during a period of one year and one day on each of counts 1, 2, 3, and 4, said sentences to run concurrently and that each forfeit and pay to the United States a fine in the sum of five thousand dollars on each of counts 1 and 2 and ten thousand dollars on each of counts 3 and 4, besides the costs in this behalf expended, and that execution issue therefor.

197 It is further ordered that the sentences in this cause begin to run at noon today, Friday, August 30, A. D. 1918.

198 And afterwards, to wit, on the 30th day of August, A. D. 1918, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Comes the United States by Charles F. Clyne, Esq., United States Attorney come also the defendants, Olin B. Anderson, Arthur Boose, J. F. Doran, James Elliott, Ray S. Fanning, John M. Foss, Ted Fraser, Harrison George, Joe Graber, C. R. Griffin, Clyde Hough, M. Levine, W. H. Lewis, Harry Loyd, Herbert Mahler, James M. Manning, Charles H. Mackinnon, Joe McCarty, Herbert McCutcheon, Pete McEvoy, V. V. O'Hare, Louis Parenti, James Phillips, Charles Plahn, William Tanner, Frank Westerlund, in their own proper persons to have the sentence and judgment of the court pronounced upon them, they having heretofore, to wit: on the 17th day of August A. D. 1918, been adjudged guilty by a jury in due form of law of the violation of Sections 6, 19 and 37 of the Criminal Code of the United States and Section 4 of the "Espionage Act" of June 15, 1917, as charged in the indictment filed herein against

them, and each of the said defendants being asked by the Court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him, and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury as aforesaid that each of the said defendants Olin B. Anderson, Arthur Boose, J. T. Doran, James Elliott, Ray S. Fanning, John M. Foss, Ted Fraser, Harrison George, Joe Graber, C. R. Griffin, Clyde Hough, M. Levine, W. H. Lewis, Harry Lloyd, Herbert Mahler, James H. Manning, Charles H. Mackinnon, Joe McCarty, Herbert McCutcheon, Pete McEvoy, V. V. O'Hare,
199 Louis Parenti, James Phillips, Charles Plahn, William Tanner, Frank Westerlund, be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas, for and during a period of five years on each of counts one, two, and four, and two years on count three said sentences to run concurrently and that he forfeit and pay to the United States a fine in the sum of five thousand dollars, on each of counts one and two, and ten Thousand dollars on each of counts three and four besides the costs in this behalf expended, and that execution issue therefor.

It is further ordered that the sentences in this cause begin to run at noon today, Friday, August 30, A. D. 1918.

And afterwards, to wit, on the 30th day of August, A. D. 1918, the following order was hand and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Comes the United States by Charles F. Clyne, Esq., United States attorney, Come also the defendants, Charles Ashleigh, John Baldazza, Charles Bennett, G. J. Bourg, Dan Buckley, J. H. Beyers, Stanley J. Clark, Alexander Cournos, C. W. Davis, Edward F. Doree, Ben Fletcher, Joseph J. Gordon, Peter Green, Ed. Hamilton, Fred Jaakkola, Ragner Johannsen, Jack Law, Burt Lorton, John Martin, J. A. MacDonald, Francis Miller, John Pancner, Grover H. Perry, Albert B. Prashner, C. M. Rice, Don Sheridan, Archie Sinclair, James Slovik, Vincent St. John, Sigfried Stenberg, James P. Thompson, John I. Turner, John Walsh, in their own proper persons to have the sentence and judgment of the court pronounced upon them, they having heretofore, to wit; on the 17th day of August A. D. 1918, been adjudged guilty by a jury in due form of law of
200 the violation of Sections 6, 19 and 37 of the Criminal Code of the United States and Section 4 of the "Espionage Act" of June 15, 1917, as charged in the indictment filed herein against

them and each of the said defendants being asked by the court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reason why sentence and judgment should not be pronounced. It is therefore Considered and Ordered by the court and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury as aforesaid that each of the defendants Charles Ashleigh, John Baldazza, Charles Bennett, G. J. Bourg, Dan Buckley, J. H. Byers, Stanley J. Clark, Alexander Cournos, C. W. Davis, Edward F. Doree, Ben Fletcher, Joseph J. Gordon, Peter Green, Ed. Hamilton, Fred Jaakkola, Ragner Johannsen, Jack Law, Durt Lorton, John Martin, J. A. MacDonald, Francis Miller, John Prancer, Grover H. Perry, Albert B. Prashner, C. M. Rice, Don Sheridan, Archie Sinclair, James Slovik, Vincent St. John, Sigfried Stenberg, James P. Thomson, John I. Turner, John Walsh, be confined and imprisoned in the United States Penitentiary at Leavenworth Kansas, for and during a period of six years on count one, ten years on counts two and four, and two years on count three, said sentences to run concurrently and that he forfeit and pay to the United States a fine in the sum of five thousand dollars on each of counts one and two, and ten thousand dollars on each of counts three and four besides the costs in this behalf expended, and that execution issue therefor.

It is further ordered that the sentence in this cause begin to run at noon today, Friday August 30, A. D. 1918.

201 And afterwards, to wit, on the 30th day of August, A. D. 1918, the following order was had and entered of record in said cause before the Honorable Kenesaw M. Landis, Judge, to wit:

6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Comes the United States by Charles F. Clyne, Esq., United States Attorney, come also the defendants, John Avila, Dave Ingar, H. F. Kane, William Moran, Joseph A. Oates, Pierce C. Wetter and William Weyh, in their own proper persons to have the sentence and judgment of the court pronounced upon them, they having heretofore, to wit, on the 17th day of August, A. D. 1918, been adjudged guilty by a jury in due form of law of the violation of Sections 6, 19 and 37 of the Criminal Code of the United States and Section 3 of the "Epionage Act" of June 15, 1917, as charged in the indictment filed herein against them, and each of the said defendants being asked by the Court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court and is the sentence and judgment of the Court upon the

verdict of guilty so rendered by the jury as aforesaid that each of the said defendants, John Avila, Dave Ingar, H. F. Kane, William Moran, Joseph A. Oates, Pierce C. Wetter, and William Weyh, be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas, for and during a period of five years on each of counts one, two and four, and two years on count three, said sentences to run concurrently and that he forfeit and pay to the United
202 States a fine in the sum of five thousand dollars on each of counts one, two, three and four besides the costs in this behalf expended, and that execution issue therefor.

It is further ordered that the sentence in this cause begin to run at noon today, Friday, August 30, A. D. 1918.

And afterwards, to wit, on the 30th day of August, A. D. 1918, the following order was had and entered of record in said cause, before the Honorable Kenesaw M. Landis, Judge, to wit:

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD et al.

Comes the United States by Charles F. Clyne, Esq., United States Attorney, come also the defendants Carl Ahlteen, George Andrychine, Vincente Aurelio Azuara, Richard Brazier, Ralph H. Chaplin, Forrest Edwards, William D. Haywood, Charles L. Lambert, Leo Laukki, Vladimir Lossieff, Walter T. Nef, Manuel Rey, Charles Rothfiser, James Rowan, Sam Scarlett, in their own proper persons to have the sentence and judgment of the Court pronounced upon them they have heretofore, to wit: on the 7th day of August, A. D. 1918, been adjudged guilty by a jury in due form of law of the violation of Sections 6, 19 and 37 of the Criminal Code of the United States and Section 4 of the "Espionage Act" of June 15, 1917, as charged in the indictment filed herein against them and each of the said defendants being asked by the court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury as aforsaid, that each of the said defendants, Carl Ahlteen,
203 George Andrychine, Vincente Aurelio Azuara, Richard Brazier, Ralph H. Chaplin, Forrest Edwards, William D. Haywood, Charles L. Lambert, Leo Laukki, Vladimir Lossieff, Walter T. Nef, Manuel Rey, Charles Rothfiser, James Rowan, Sam Scarlett, be confined and imprisoned in the United States Penitentary at Leavenworth, Kansas, for and during a period of six years on count one, ten years on count two, two years on count three and twenty years on count four, said sentences to run concurrently and that he forfeit and pay to the United States a fine in the sum of five thou-

sand dollars, on each of counts one, two, three, and four, besides the costs in this behalf expended, and that execution issue therefor. It is further ordered that the sentences in this cause begin to run at noon today, Friday, August 30, A. D. 1918.

204 Friday, February 28, A. D. 1919.

Present: The honorable Kenesaw M. Landis, Judge.

No. 6125.

THE UNITED STATES

vs.

WILLIAM D. HAYWOOD.

Comes the United States by United States Attorney, comes also the defendant, Pietro Nigra, in his own proper person, to have the sentence and judgment of the court pronounced upon him, he having heretofore, to-wit, on the 17th day of August A. D. 1918 been adjudged guilty in due form of law, as charged in the indictment filed herein against him, and the defendant being asked by the court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him, and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court, and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury aforesaid that the defendant, Pietro Nigra, be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas for and during a period of eighteen months on each count of the indictment, and that the sentences run concurrently, it is further ordered that the sentence in this cause begin to run at noon today, February 28, A. D. 1919.

205 In the United States District Court for Northern District of Illinois, Eastern Division.

I, John H. R. Jamar, clerk of the District Court of the United States of America, for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of two orders entered of record on August 17, A. D. 1918, five orders entered of record on August 30, 1918, and one ordered entered of record on February 28, A. D. 1919, in said court in Case Number 6125, wherein the United States is Plaintiff and William D. Haywood is Defendant, as same appears from the originals now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District this 13th day of June A. D. 1921.

John H. R. Jamar, Clerk.

206 EVIDENCE: GOVERNMENT EXHIBIT C.

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session, 1920.

No. 2721.

WILLIAM D. HAYWOOD et al., Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before Baker, Alschuler, and Page, Circuit Judges.

BAKER, *Circuit Judge*, delivered the opinion of the Court:

Plaintiffs in error were sentenced on each of four counts of an indictment for conspiracy to violate, or to obstruct the execution of, sundry laws of the United States. Terms of imprisonment, separately assessed against each defendant on each count, were to run concurrently. As the prison sentence under the fourth count equals or exceeds in each instance the period fixed under the other counts, it would be unnecessary, if the case sought to be made under the fourth count was adequately pleaded and proved, to inquire further, except for the fact that separate fines were levied under each count. For example, many defendants were fined $5,000 under the first count, $5,000 under the second, $10,000 under the third, and $10,000 under the fourth. And since these fines cannot be satisfied by payment under any one count, the defendants are entitled to a review of the case under each count.

Before proceeding further we think it right to emphasize the fact that a review by an appellate tribunal is not a requirement in affording a defendant the due process of law that is secured to him
207 by the Constitution. In England writs of error in criminal cases are of comparatively recent origin. In our country, though writs of error within certain limitations have been allowed from the beginning, the grant has been of grace or expediency, not of constitutional demand. In the court of first instance the defendant is given his day in court, his trial by jury, his opportunity to confront opposing witnesses, and all other elements of due process of law. And if Congress might have withheld entirely the privilege of review, it is self-evident that Congress may at any time reduce the previously granted privilege. From recent legislation (U. S. Stat., vol. 40, pt. 1, p. 1181; Comp. St. Ann. Supp. 1919, Sec. 1246) we gather the Congressional intent to end the practice of holding that an error requires the reversal of the judgment unless the opponent can affirmatively demonstrate from other parts of the record that the error was harmless, and now to demand that the complaining party

show to the reviewing tribunal from the record as a whole that he has been denied some substantial right whereby he has been prevented from having a fair trial.

By demurrer, motion for directed verdict, requests for instructions, and motion in arrest, defendants challenged the sufficiency of the case as pleaded and proved under the first count.

Sec. 6 of the Penal Code, a re-enactment of Sec. 5336 of the Revised Statutes, is the basis of the count. It denounces conspiracies to use force to prevent, hinder or delay the execution of any law of the United States.

Defendant, so the Government contended, conspired to prevent by force the execution of the following laws: 1. The joint resolution of April 6, 1917, declaring war on Germany; 2. The President's proclamation of April 6, 1917, concerning conduct of alien enemies; 3. Act of June 3, 1916, making provision for national defense; 4. Act of July 6, 1916, making appropriations for fortifications; 5. Act of August 29, 1916, making appropriations for the naval service; 6. Act of same date, making appropriations for the support of the army; 7. Act of April 17, 1917, making appropriations to cover deficiencies; 8. Act of May 18, 1917, known as the Selective Service Act; 9. Act of June 15, 1917, making appropriations for urgent deficiencies; 10. Act of July 24, 1917, to purchase, manufacture and operate airships; 11. Act of June 15, 1917, known as the Espionage Act; 12. The following sections of the Penal Code of March 4, 1909, namely, 4, 19, 21, 37, 42, 135, 136, 140 and 141.

208 How was the execution of these various laws to be prevented by force? Defendants were offices and agents of the Industrial Workers of the world. That organization was opposed to capitalism and the wage system, believed that the "workers" should seize the "tools of industry," was hostile to our system of government, denounced our entry into the war as the result of the influence and desire of the "ruling, capitalistic classes", and undertook to block our efforts to win. Defendants, having control of that organization as an instrument, conspired to have their members, who were workmen in factories engaged in producing war munitions and supplies, break machinery, spoil materials, strike and use force to prevent other workmen from taking their places; also to have their members refrain from registering in obedience to the Selective Service Act, to have them desert if brought into registration offices, and to rescue them by force if caught; and also, in defiance of the Espionage Act, to cause all whom they could influence by speeches, pamphlets and newpapers to keep out of the military service.

Those parts of the case under the first count that have to do with violations of the Selective Service Act and the Espionage Act must here be eliminated for the following reasons: Count three is for conspiracy to violate the Selective Service Act. Count four is for conspiracy to violate the Espionage Act. Granting that Sec. 6 of the Penal Code, on which count one is predicated, is broad enough in its terms to cover conspiracies to use force in preventing, hindering or delaying the execution of the Selective Service Act and the Espionage Act, the penal provisions of these last named acts constitute

he specific directions of Congress for the punishment of all obstruc-
ions, forcible or otherwise, of the recruiting and enlistment service.
'ongress did not intend, in the face of the Constitutional prohibi-
ion, to inflict punishment twice for the same offense. Under the
amiliar maxim, generalia specialibus non derogant, these specific
rovisions effected pro tanto a repeal of Sec. 6. Snitkin v. United
States, 265 Fed., 489.

There remains, then, the question whether forcible interference
vith the operations of producers from whom the Government was
xpecting to buy or had contracted to buy war munitions and sup-
lies constituted a forcible prevention of the execution of the acts of
'ongress in declaring war and making appropriations therefor.

Undoubtedly Congress, under the war power, could have protected
by legislation the operations of such producers from all inter-
209 ference, forcible or otherwise; and as the war progressed va-
rious strengthening laws were enacted. But the question now
before us concerns the true meaning of Sec. 6. That was enacted
long before the war. It must be enforced after the war is officially
ended. Manifestly in each period, before, during, and after, it must
be given the same meaning and effect.

So the question under Sec. 6 covers not only war supplies, but also
any peacetime supplies which the Government might intend to buy
or had contracted to buy. The Government Printing Office is con-
ducted under laws directing, and making appropriations for, its
operations. Any direct interference by force with its operations
might possibly be held to be a forcible prevention of the execution
of laws of the United States. (Running a printing office, however,
is a proprietary rather than a governmental function.) But the
printing office cannot operate without paper. Suppose the workmen
in a paper mill that has a contract to supply paper to the printing
office, with knowledge of the contract and with intent to prevent the
mill from fulfilling it, go on strike and forcibly prevent the running
of the mill. Suppose that workmen in a hemlock forest whose owner
has a contract to supply logs to the paper mill that has a contract to
supply paper to the printing office, with knowledge of those con-
tracts and with intent to prevent their execution, go on strike and
forcibly stop the timberman's operations. And so on, along the
whole imaginable line of the-house-that-Jack-built. Are these forc-
ible stoppers of industrial production guilty under Sec. 6? How
are the laws of the United States executed? By officials upon whom
the duty is laid. Performance of that duty cannot be delegated.
Producers, who have contracts to furnish the Government with sup-
plies, are not thereby made officials of the Government. Defendants'
force was exerted only against producers in various localities. De-
fendants thereby may have violated local laws. With that we have
nothing to do. Federal crimes exist only by virtue of federal statutes;
and the lawmakers owe the duty to citizens and subjects of making
unmistakably clear those acts for the commission of which the citizen
or subject may lose his life or liberty. Sec. 6 should not be enlarged
by construction. Its prima facie meaning condemns force only
when a conspiracy exists to use it against some person who has author-

ity to execute and who is immediately engaged in executing a law of the United States.

210 Baldwin v. Franks, 120 U. S., 678, is the leading case. By a treaty between China and the United States Chinese persons were guaranteed certain civil rights in the United States. That treaty was a part of the supreme law of our land. In pursuance of a conspiracy, Baldwin, by force exerted upon the bodies of certain Chinese persons, prevented them from enjoying the rights guaranteed by the treaty. Section 6, the court said, "means something more than setting the laws themselves at defiance. There must be a forcible resistance of the authority of the United States while endeavoring to carry the laws into ex-cution. * * * His (Baldwin's) force was exerted against the Chinese people, and not against the government in its effort to protect them."

We conclude that no case was made under count one.

Similar attacks were made upon the case under count two.

This count is based on Sec. 19 of the Penal Code, which denounces conspiracies to injure citizens of the United States in the exercise of any "right or privilege secured to them by the Constitution and laws of the United States."

Defendants were charged with conspiring to prevent, by strikes and sabotage, such of the producers described in count one as were citizens from fulfilling their contracts with the Government for war munitions and supplies. To produce, to sell, to contract to sell to any buyer, are not rights or privileges conferred by the Constitution and laws of the United States. If the buyer is an agent of the United States, he needs a federal law to qualify him as a buyer; but the producer and seller is exercising only such rights as antedated federal law, were not included in the grants of power in the Constitution (except to the extent that his product comes under federal taxation, regulation of interstate commerce, and the like), and were expressly reserved by the Tenth Amendment. Foreign governments, foreign and domestic corporations, individuals who were not citizens, all sold war supplies to our Government, equally with citizens. No case was made under count two. United States v. Cruikshank, 92 U. S., 542; United States v. Lancaster, 44 Fed., 885; Lackey v. United States, 107 Fed., 114; United States v. Eberhart, 127 Fed., 254. If Congress, under its war power, had limited the production of war supplies to citizens, there would be an analogy to United States v. Waddell, 112 U. S. 76, wherein homestead entry of public lands was limited to citizens.

Common to the case under counts three and four are assignments on rulings made prior to the trial. On September 5, 191

211 agents of the Department of Justice raided the offices of the I. W. W. in various cities and seized their files of correspondence, together with copies of newspapers and pamphlets. The greater part was taken in Chicago from the general headquarters in charge of Haywood. The affidavits, on which the search warrants issued, failed to describe the property to be taken except by reference to a general character, and failed to state any facts from which the magistrates could determine the existence of probable cause. If the

proper parties had made prompt application, it may be assumed that they would have obtained orders quashing the writs and restoring the property. Veeder v. United States, 252 Fed., 414. If, following restoration, Haywood and others were adjudged to be in contempt for refusing to obey subpœnas and orders of court to produce the files and documents before the grand jury, it may be assumed that such judgments would be reversed. Silverthorne Lumber Co. v. United States, 251 U. S., 385. Nothing of the sort occurred. Government attorneys, without objection or hindrance, used the property as evidence before the grand jury. Indictment was returned on September 28, 1917. In February, 1918, defendants petitioned the court for an order to return the property, and the Government moved for an impounding order. In March, 1918, defendants moved to quash the indictment on the ground that evidence illegally obtained had been used before the grand jury. From defendants' verified motions to return the property and to quash the indictment, from the Government's verified motion to impound, and from the property then in court, there was a sufficient basis of facts to justify the trial judge in finding that there was probable cause to believe that the property, particularly identified, had been used in the commission of the felonies described in counts three and four. Motions to return the property and to quash the indictment were overruled, and the motion to impound was sustained. The trial lasted from the middle of April to the middle of August, 1918. Repeatedly during the trial the defendants objected and excepted to the admission of such property in evidence.

The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

212 Part of the Fifth Amendment is as follows: "Nor shall any person * * * be compelled in any criminal case to be a witness against himself."

Defendants claim that by the doings and rulings hereinabove recited both of these safeguards were broken.

From the thirteenth to the middle of the seventeenth century the Ecclesiastical Courts of England and during the later part of the period the Courts of Star Chamber and of High Commission compelled defendants to testify respecting criminal charges against them. During the last century of our colonial period the principle that no person shall be compelled in a criminal case to be a witness against himself had become a fixed part of our inheritance. And it was that fixed and definite meaning that in clearest terms was incorporated in our Federal Bill of Rights. "Witness" is the key word. Constitutional safeguards should be applied as broadly as the wording, in the historical light of the evil that was aimed at, will permit; and so a defendant is protected not merely from being placed on the witness stand and compelled to testify to his version of the matters set forth in the indictment; he is protected from authenticating by

his oath any documents that are sought to be used against him; he is protected from producing his documents in response to a subpœna duces tecum, for his production of them in court would be his voucher of their genuineness; he is protected from an act of Congress (Boyd v. United States, 116 U. S., 616) declaring that the Government's statement of the contents of his documents, if he fail to produce them on notice, shall be taken as confessed. But unless the origin and purpose of the command be disregarded and the key word be turned into an unintended, if not impossible, meaning, no compulsion is forbidden by the Fifth Amendment except testimonial compulsion. At the trial of this case no defendant was compelled in any way to become a witness against himself or against any of his alleged co-conspirators. Letters, pamphlets and other documents, identified by other witnesses, were competent evidence; and the trial judge, correctly finding them competent, was not required to stop, and would not have been justified in stopping, the trial to pursue a collateral inquiry into how they came to the hands of Government attorneys. Consequently there was no violation of defendants' rights under the Fifth Amendment. Adams v. New York, 192 U. S., 585; Rice v. United States, 251 Fed., 778; Laughter v. United States, 259 Fed., 94; McKnight v. United States, 263 Fed., 832; Wigmore on Evidence, Vol. III, Secs. 2250-1 and 2263-4.

213 If defendants had done nothing but object to the introduction of the documentary evidence at the trial, no further constitutional question would be involved. But prior to the trial they had moved for a return and had resisted the Government's motion to impound. And Weeks v. United States, 232 U. S., 383, is authority for holding that, if the court erred in impounding the documents and in refusing to return them to defendants, the present judgment must be reversed, because, if the documents had been returned to defendants, they would not have been available to the Government at the trial, they could not have been obtained under a subpœna duces tecum, and the Government would have been compelled to begin anew its effort to seize them.

Were the defendants' rights under the Fourth Amendment violated by overruling their motions for a return of the property? This safeguard had its origin at a different period and in a different evil from the period and the evil out of which grew the Fifth Amendment. In the third quarter of the eighteenth century British officers, armed with general warrants or writs of assistance, were accustomed to invade the privacy of the homes of our colonial forefathers on blind fishing-expeditions. Though the same evil at the same time was being resisted in England, the resistance on this side of the water was American resistance, and the harassing raids were a dominant cause of our revolt. This safeguard had its roots in American feeling and action; and it was not a mere bringing forward of an inherited principle that had been settled a hundred years before. Though the Fourth and Fifth Amendments stand side by side, each is as independent of the other as of any of the remaining safeguards in our Federal Bill of Rights.

Not all searches and seizures are forbidden. Consider, first, the

haracter of the property that may be seized. It has never been leemed unreasonable to hunt for and take stolen property, smug-gled goods, implements of crime, and the like. Inasmuch as the locuments in question were the tools by means of which the defend-nts were committing the felonies, there was no immunity in the nature of the property. Consider, next, the person whose privacy is nvaded. If it be granted that the home of Burglar Smith, in which ne has concealed the stolen goods and the implements of his crime, an not lawfully be searched and the property seized, except under a warrant, based on an affidavit, particularly describing the place to be searched and the things to be seized, and stating facts from which the issuing magistrate may properly find the existence of prob-214 able cause for believing that the stolen property and the implements of the crime are there concealed, it does not follow hat Burglar Smith will be heard to complain that the Fourth Amendment has been violated by the forcible and unlawful breaking into the home of Burglar Jones and the seizure there of the stolen property and implements of crime of Burglar Smith. Each defend-ant moved for the return of property that had never been in his pos-session and was not taken from his person or home or place of busi-ness. When asked by the court to specify what property had been taken from each and how their several privacies had been invaded, they declined. In standing on their motions as made (and acced-ing to the court's suggestion would not have bettered their position) their theory was and now is that the I. W. W. was a partnership; that each partner, in possession of any document, was the custodian thereof for every other partner; that an unlawful invasion of the privacy of one effected a breach of the Fourth Amendment, available to all, severally and collectively. If the soundness of the contention respecting partners be conceded, the inquiry turns to the nature of the I. W. W. It was a voluntary association. It operated under a constitution and by-laws, quite as a corporation operates under a charter and by-laws. Its members at stated times elected officers for limited terms. On the retirement of any officer it was his duty under the by-laws to turn over to his successor the files, records and other property in his possession that pertained to the affairs of the organization. It was an association organized for purposes other than profit, and the payment of dues and fines by its members was merely incidental to carrying on its purposes. During membership or upon withdrawal no member had a proportionable proprietary or possessory right to any of its property or effects. In all of its con-tacts with the world, except commercial, it had the essential organi-zation and method of a non-profit corporation. If it rented offices and bought furniture and failed to pay, the creditors might hold jointly and severally all the offices and members that could be found, because they could not show a corporate charter to shield them from personal liability. But in other respects the rights of the members should be measured by the essential attributes of the organization they had chosen to adopt. Otherwise they would be granted im-munity by reason of their refusal to incorporate. Having explicitly

agreed that they should not bear to one another the relation of partners, they cannot now insist that the court shall treat them
215 as such. Niblack on Voluntary Societies, Secs. 22, 116, 128; White v. Brownell, 3 Daly (N. Y.), 329; In re St. James Club, 13 Eng. L. & Eq. 529; Ostrom v. Green, 161 N. Y., 353; Rhode v. United States, 34 App. Cas. D. C., 253. Defendants were indicted as individuals, not as members of the I. W. W. That organization was not on trial. In seizing the outlaw property of the I. W. W. organization, the officers of the Government did not impinge upon the rights of any defendant under the Fourth Amendment. Consequently there was no error in impounding the property, overruling the motion for the return thereof, and refusing to quash the indictment.

Count three may be outlined thus: From May 18, 1917, to the returning of the indictment the United States was at war with Germany. During that period the defendants were members of the I. W. W., and they conspired to commit ten thousand offenses against the United States, each to consist of counseling, aiding and abetting one of the ten thousand male persons, other members of said organization, who were eligible conscripts under the Selective Service Act of May 18, 1917, and who by the President's proclamation were required to register on June 5, 1917, but whose names are unknown, to fail and refuse to present himself for registration, and five thousand other offenses, each to consist of counseling, aiding and abetting one of the five thousand persons, still other members of said organization, who were eligible conscripts and who should register, but whose names are unknown, to desert the service. And in pursuance of the conspiracy defendants committed overt acts.

Duplicity is the first objection. Defendants recognize that a single conspiracy may be formed to commit numerous offenses. Frohwerk v. United States, 249 U. S., 204. In form this count alleges one conspiracy to commit two groups of offenses of the same general character. But the urge of defendants is that a conspiracy formed on May 18, 1917, to counsel and aid members of the I. W. W. to fail to register on June 5, 1917, would come to end on the latter date; that a conspiracy to counsel and aid those members of the I. W. W. who should in fact register on June 5, 1917, to desert the service, could not be formed until on or after that date; and that, therefore, though in form of allegation there is but one conspiracy, in substance and of necessity two separate and distinct conspiracies are included in the same count. The validity of this conclusion depends on the truth of the premise that a conspiracy to counsel and
216 aid desertions could not be formed until after members of the I. W. W. had registered. In Friedman v. United States, 236 Fed., 816, an indictment was upheld that charged a conspiracy to conceal assets from a trustee thereafter to be appointed in an impending bankruptcy proceeding. If, therefore, a conspiracy can be formed and an overt act committed to frustrate an anticipated situation, the counseling and aiding of desertions could be included in the conspiracy formed prior to June 5, 1917, as one of the objects thereof, along with the other object of counseling and aiding re

fusals to register; and it is manifest that both objects might be forwarded by the same acts and utterances. When the object of counseling and aiding refusals to register came to an end, the conspiracy, unless abandoned, would continue while the object of counseling and aiding desertions remained alive.

Contention is made that the count is bad because the overt acts set forth do not appear on their face to have had any tendency to effectuate the objects of the conspiracy. We think they had. But it is not necessary that the pleading should show the particular way the overt act furthered the conspiracy. Frohwerk v. United States, 249 U. S., 204.

Defendants finally assert that the count is void for uncertainty in that the persons whom the defendants were to counsel and aid were not separated from the general mass. They were identified by class as being those eligible conscripts who were members of the I. W. W. The grand jurors did not know their names. Defendants were alleged to be members of the I. W. W. We think the count disclosed to them the offense with sufficient particularity.

Count four charged a conspiracy and the commission of overt acts to cause insubordination in the military and naval forces and to obstruct the recruiting and enlistment service in violation of the Espionage Act "by means of personal solicitation, of public speeches, of articles printed in certain newspapers circulating throughout the United States (here twelve are designated by name), and of the public distribution of certain pamphlets (here the titles of three are given), the same being solicitations, speeches, articles and pamphlets persistently urging insubordination, disloyalty and refusal of duty in said military and naval forces and failure and refusal on the part of available persons to enlist therein."

Every element of the offense is in some way mentioned by the pleader. The point is made that he should have set out the newspaper articles either verbatim or in substance, and that neither was done. In view of Williamson v. United States, 207 U. S., 217 425, Aczel v. United States, 232 Fed., 652; Lew Moy v. United States, 237 Fed., 50, and Jelke v. United States, 255 Fed., 264, defendants do not question that the solicitations and speeches were adequately identified. If the wording, that the solicitations and speeches were persistent urgings of insubordination and refusal to enlist, is not the mere opinion or conclusion of the pleader, but is in fact a statement of their purport, the same wording should be accepted as a statement of fact in regard to the newspaper articles. Among the overt acts set forth in the count several articles from the aforementioned newspapers, with date of issue, page and column specified, were copied verbatim. These would help to inform the defendants of the exact nature of the charge against them. As we do not intend to cumber this page with copies, we can do no better than the pleader did in setting out their substance: The articles persistently urged insubordination, disloyalty and refusal of duty in the military and naval forces and failure and refusal on the part of available persons to enlist therein.

Most of the assignments concerning the admissibility of evidence and the correctness of the court's instructions have disappeared by reason of the holding that no case was pleaded and proved under either count one or count two.

Under counts three and four numerous objections were made on the ground that the matters offered in evidence antedated the passage of the Selective Service Act and the Espionage Act. If the court erred in admitting them on the ground that they had probative force in establishing the criminal intent charged in these counts, the ruling was harmless if the matters were in fact admissible on any ground. We agree at once (Kammann v. United States, 259 Fed., 192) that criminality cannot be proved by proving innocence. There is a rule that, in certain classes of cases, the criminal intent charged in the indictment may be made out, or at least supported, by proof of the commission of similar prior offenses. But the terms of the rule require that the prior matters be offenses when committed. To illustrate: Take a time when malicious and premediated homicide was not unlawful. During that time a person with premeditated malice takes the life of a human being by means of a certain poison. Because he has committed no crime, it is impossible that he should have had any criminal intent. Later a murder law is enacted. Under it the same person is charged with having taken, feloniously and with premeditated malice, the life of a hu-
218 man being by means of the same poison. Presumptively he is innocent. Presumptively he intended, when the murder law was enacted, to respect and obey it. Against the presumption that he did not have the criminal intent to commit murder, the prior innocent homicide has no probative value. But that does not mean that matters in connection with the innocent homicide have no probative value for other purposes in the murder case. Just prior to the innocent homicide this person had in his possession a large quantity of the particular poison. Possession, once established, is presumed to continue. This would bear on his possession, at the time of the alleged murder, of the means by which the murder was accomplished. In committing the innocent homicide this person learned that this particular poison would cause death quickly but in a way that might be mistaken for the result of a natural ailment. Knowledge, once established, is presumed to continue. This would bear on his knowledge of the use and efficacy of the means at the time of the alleged murder. But knowledge of the use and possession of the means by which murder may be committed are matters quite apart in our judgment, from the intent to commit murder.

Evidence of the organization of the I. W. W., the defendants' control, and the methods of operation through correspondence, pamphlets and official newspapers, was competent, though antedating the laws in question, as bearing on defendants' possession and knowledge of the use of the means by which these felonies could be committed. Furthermore, the presumption of continuing possession and knowledge was forfeited by evidence of the same conditions down to the time of the indictment.

Newspaper articles and pamphlets, printed before the statutes in question were passed, were rendered competent by proof of their use within the indictment period.

Correspondence, newspaper articles and pamphlets, antedating the statutes, but contemplating their passage and declaring the purpose to violate and obstruct them when passed, were of course admissible as bearing directly upon criminal intent.

If these groupings do not cover all of the objections to the evidence under counts three and four, we regard the remainder as of trivial consequence. We find such an abundance of clear and competent evidence within the indictment period that we believe the verdict was inevitable. Some of the defendants claim that there was no evidence connecting them with the conspiracy except the
219 fact that they were members of the I. W. W. And several, who were not members at the time, insist that there is no evidence against them at all. In each such case our finding is that there was sufficient evidence on which to submit to the jury the question whether the particular defendant was a member of the established conspiracy.

We find no abuse of the trial court's discretion controlling the scope of the cross-examinations of witnesses.

We find no error in the charge to the jury, and it adequately covered all of defendants' proper requests for instructions. The law of conspiracy under the statutes of the United States has been so frequently and recently expounded in decisions of the Supreme Court and the Court of Appeals that further repetition is deemed unnecessary.

In the case of each defendant the judgment is modified by striking therefrom the imprisonments and fines assessed under counts one and two; and, as so modified, the judgment is affirmed.

A true Copy. Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

220 The following are the Warrants of Deportation mentioned in said stipulation:

221 WARRANT FOR DEPORTATION.

No. 54616/151.

United States of America,

U. S. Department of Labor,

Washington.

To U. S. Commissioner of Immigration, Montreal, Canada, or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Leavenworth, Kansas, I have

become satisfied that the alien Herbert Mahler, who landed at the port of Seattle, Wash., on or about the 1st day of Sept., 1913, has been found in the United States in violation of the Act of May 10, 1920; that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final. That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military establishment of the United States, approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Canada the country whence he came, at the expense of the appropriation: "Expenses of Regulating Immigration, 1922."

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 10th day of November, 1921.

(Sgd.) E. J. Henning, Assistant Secretary of Labor.

222 WARRANT FOR DEPORTATION.

No. 54616/38.

United States of America,

U. S. Department of Labor,

Washington.

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Leavenworth, Kansas, I have become satisfied that the alien Joseph Oates, or Joseph A. Oates, or John Joseph Oates, who landed at the port of Boston, Mass., ex S. S. "Cymric," on or about the 1st day of October, 1904, has been found in the United States in violation of the Act of May 10, 1920; that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purpose-" approved June 15, 1917, or the amendment thereof approved

May 16, 1918, the judgment on such conviction having become final. That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final, and may be deported in accordance therewith.

I, E. J. Henning, assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to England the country whence he came, at the expense of the appropriation: "Expenses of Regulating Immigration, 1922." You are directed to purchase transportation for the alien from New York, N. Y., to his home in England at the lowest available rate, payable from the above named appropriation. Execution of this warrant should be deferred until the alien has been released from prison.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 8th day of November, 1921.

(Sgd.) E. J. Henning, Assistant Secretary of Labor.

223 WARRANT FOR DEPORTATION.

No. 54616/56.

United States of America,

U. S. Department of Labor,

Washington.

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Leavenworth, Kansas, I have become satisfied that the alien Pietro Nigra or Nigri, who landed at the port of New York, N. Y., on or about the 1st day of December, 1903, has been found in the United States in violation of the Act of May 10, 1920, to wit:

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States and for other purposes," approved June 15, 1917, or the *ma*endment thereof approved May 16, 1918, the judgment on such conviction having become final.

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Es-

tablishment of the United States, approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final, and may be deported in accordance therewith.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy, the country whence he came at the expense of the appropriation: "Expenses of Regulating Immigration, 1922." You are directed to purchase transportation for the alien from New York, N. Y., to his home in Italy at the lowest available rate, payable from the above named appropriation. Execution of this warrant should be deferred until the alien has been released from prison.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 9th day of November, 1921.

E. J. Henning, Assistant Secretary of Labor.

224 WARRANT FOR DEPORTATION.

No. 54616/60.

United States of America,

U. S. Department of Labor,

Washington.

To Commissioner of Immigration, Ellis Island, N. Y. Harbor, N. Y., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Leavenworth, Kansas, I have become satisfied that the alien John Avila, who landed at an unknown port, on or about the 1st day of July, 1904, has been found in the United States in violation of the immigration *act of* Act of May 10, 1920, to wit:

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act — "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment of such conviction having become final.

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States, approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Portugal the

ountry whence he came, at the expense of the appropriation: "Ex-
enses of Regulating Immigration, 1922." You are directed to pur-
hase transportation for the alien from New York, N. Y., to his home
n Portugal at the lowest available rate, payable from the above named
ppropriation. Execution of this warrant should be deferred until
he alien has been released from prison.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 10th day of November, 1921.

—— ——, Assistant Secretary of Labor.

225 WARRANT FOR DEPORTATION.

United States of America,

U. S. Department of Labor,

Washington.

No. 54516/55.

To Commissioner of Immigration, Angel Island Station, San Francisco, Cal., or to any Officer or Employee of the U. S. Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector G. H. Paul, held at Leavenworth, Kansas, I have become satisfied that the alien William Moran, who landed at the port of New York, N. Y. on or about the 1st day of January, 1907, has been found in the United States in violation of the Act of May 10, 1920.

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved June 15, 1917, the amendment thereof approved May 16, 1918, the judgment on such conviction having come final.

That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States, approved May, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final, and may be deported in accordance therewith.

I, E. J. Henning, Assistant Secretary of Labor, by virtue of the Power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Australia, the country whence he came, at the expense of the appropriation: "Expenses of Regulating Immigration, 1922." You are directed to purchase transportation for the alien from New York, N. Y., to his

home in Australia at the lowest available rate, payable from the above named appropriation. Execution of this warrant should be deferred until the alien has been released from prison.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 9th day of November, 1921.

E. J. Henning, Asst. Secretary of Labor.

226 Which was all of the evidence in the case.

The court thereafter, upon the petitions of said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, the evidence and stipulation in said cause, ordered that the petitions of said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran for Habeas Corpus dismissed and remanded the said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, into the custody of said Howard Eby, respondent, to which order of the court the petitioners by their counsel then and there duly accepted.

Thereupon the said Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, prayed an appeal to the United States Supreme Court and filed their joint and several assignments of errors, whereupon it was further ordered that the appeal as prayed for to the Supreme Court of the United States be, and the same hereby is, allowed.

Thereupon, and upon the first day of November, A. D. 1922, each of said petitioners asked and were granted leave by the court to present within thirty (30) days from said first day of November, A. D. 1922, their Bill of Exceptions to the court, and to the Hon. George Page, the judge of said court, before whom said petitions were heard, to be settled, allowed and filed, and made a part of the record herein, according to the law and the practice of the court.

227 Order Settling Bill of Exceptions.

Forasmuch as the matter above set forth do not otherwise appear as of record, these petitioners tender this as their joint and several Bill of Exceptions, which is all of the evidence received in said cause, and pray that same may be allowed, settled, signed and sealed, by the judge of this court presiding at the hearing to wit by the said Honorable George Page, pursuant to statute in such cases made, to be filed and made a part of the record herein, which is done accordingly, this 29th day of November A. D. 1922, which is within the time heretofore granted by the court for the presenting, signing and filing of said Bill of Exceptions herein.

Geo. T. Page, C. Judge.

Nov. 29, 22.

[File endorsement omitted.]

8 STATE OF ILLINOIS,
County of Cook, ss:

the District Court of the United States for the Northern District of Illinois, Eastern Division.

Case- Nos. 34099, 34100, 34102, 34125.

In the Matter of

ERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA, and WILLIAM MORAN

vs.

IOWARD EBY, Inspector in Charge, U. S. Immigration Service, U. S. Dept. of Labor.

PRÆCIPE.

[Filed Nov. 29, 1922.]

To John H. R. Jamar, Esq., Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Please prepare a true, correct, and complete transcript of the record n the above entitled cause to be filed in the Supreme Court of the Jnited States in the appeal allowed the above named petitioners to aid court, to wit:

1. The petition for Writ of Habeas Corpus, Order for Writ of Habeas Corpus, and the return.
2. Order consolidating the above cases.
3. The Bill of Exceptions.
4. Order of November 1st, dismissing petitions for Writs of Habeas Corpus, and remanding the petitioners to custody and exception thereto.
5. Petitions for appeal, assignments of errors, and orders allowing appeal as prayed for.
6. Citations and return thereon.
29 7. Cost bond.
8. Notice and order enlarging time to file record in the Supreme Court.
9. Copy of Pr-ecipe of appellants for record.
10. Additional citation and return thereon.

Otto Christensen, Attorney for Petitioners.

Received a copy of pr-ecipe for recording on appeal, this 29th lay of November A. D. 1922.

[File endorsement omitted.]

230 CLERK'S CERTIFICATE.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled Herbert Mahler, Joseph Oates, Petro Nigra, John Avilla, and William Moran, vs. Howard Eby, Inspector in Charge, U. S. Immigration Service U. S. Dept. of Labor, Nos. 34099, 34100, 34101, 34102, 23125, as the same appear from the original records and files thereof now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of December, A. D. 1922.

John H. R. Jamar, Clerk. Seal of District Court U. S., Northern Dist.

231 CITATION AND SERVICE.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in charge, Immigration Service, U. S. Department of Labor, Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Herbert Mahler is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Herbert Mahler as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page Judge of the District Court of the United States, this 29th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, Cir. Judge.

Service of the within citation is hereby accepted by Howard Eby by Charles F. Clyne, his attorney.

Charles F. Clyne.

2 CITATION AND SERVICE.

[Filed Nov. 4, 1922.]

NITED STATES OF AMERICA, *ss:*

he President of the United States to Howard Eby, Inspector in Charge Chicago Immigration Service, United States Department of Labor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the Clerk's office of said Court, wherein Herbert Mahler is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Herbert Mahler as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page Judge of the District Court of the United States, this 4th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge.

11-4, 22.

233 Service of the written citation is hereby accepted by said appellee this 4th day of November, A. D., 1922.

Charles F. Clyne, U. S. Atty.

[File endorsement omitted.]

234 CITATION AND SERVICE.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in charge, Immigration Service, U. S. Department of Labor, Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Joseph Oates is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Joseph Oates as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page Judge of the District Court of the United States, this 29th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge

Service of the within citation is hereby accepted by Howard Eby by Charles F. Clyne, his attorney.

Charles F. Clyne

235 CITATION AND SERVICE.

[Filed Nov. 4, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge Chicago Immigration Service, United States Department of Labor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C. within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the Clerk's Office of said Court, wherein Joseph Oates is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Joseph Oates as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page Judge of the District Court of the United States, this 4th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge

11-4, 22.

236 Service of the within Citation is hereby accepted by said appellee this 4th day of November, A. D., 1922.

Charles F. Clyne, U. S. Atty. J. B. I

[File endorsement omitted.]

237 CITATION AND SERVICE.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Immigration Service, U. S. Department of Labor, Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal duly allowed

by the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Pietro Nigra is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Pietro Nigra as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page Judge of the District Court of the United States, this 29th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge.

Service of the within citation is hereby accepted by Howard Eby by Charles F. Clyne, his attorney.

Charles F. Clyne.

238 CITATION AND SERVICE.

[Filed Nov. 4, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the clerk's office of said court, wherein Pietro Nigra is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Pietro Nigra as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page judge of the District Court of the United States, this 4th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge.

239 Service of the written citation is hereby accepted by said appellee this 4th day of November, A. D. 1922.

Charles F. Clyne, U. S. Atty. J. B. B.

[File endorsement omitted.]

240 & 241 CITATION AND SERVICE.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Immigration Service, U. S. Department of Labor, Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein John Avilla is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said John Avilla as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Court of the United States, this 29th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge.

Service of the within citation is hereby accepted by Howard Eby by Charles F. Clyne, his attorney.

Charles F. Clyne.

242 CITATION AND SERVICE.

[Filed Nov. 4, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the clerk's office of said court, wherein John Avilla is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said John Avilla as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Court of the United States, this 4th day of November, in the year of our Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge

11/4/22.

243 Service of the written citation is hereby accepted by said appellee this 4th day of November, A. D. 1922.

Charles F. Clyne. J. B. B.

[File endorsement omitted.]

244 CITATION AND SERVICE.

[Filed Nov. 4, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Chicago Immigration Service, United States Department of Labor, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, and filed in the clerk's office of said Court, wherein William Moran is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said William Moran as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Court of the United States, this 4th day of November, in the year of our Lord, one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judge.

245 Service of the within citation is hereby accepted by said appellee this 4th day of November, A. D. 1922.

Charles F. Clyne, U. S. Atty. J. B. B.

[File endorsement omitted.]

246 CITATION AND SERVICE.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Howard Eby, Inspector in Charge, Immigration Service, U. S. Department of Labor, Chicago, Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal duly allowed by the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein William Moran is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said William Moran as in the said

writ of error mentioned, should not be corrected and why speedy ju
tice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Cou
of the United States, this 29th day of November, in the year of o
Lord one thousand nine hundred and twenty-two.

Geo. T. Page, C. Judg

Service of the within citation is hereby accepted by Howard E
by Charles F. Clyne, his attorney.

Charles F. Clyn

Endorsed on cover: File No. 29,322. N. Illinois D. C. U.
Term No. 184. Herbert Mahler, Joseph Oates, Petro Nigra et a
appellants, vs. Howard Eby, inspector in charge, Immigration Se
ice, U. S. Department of Labor, at Chicago, Illinois. Filed Janua
2nd, 1923. File No. 29,322.

No. 184

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1923.

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA and WILLIAM MORAN,
Appellants,

vs.

HOWARD EBY, Inspector in Charge, Immigration Service, United States Department of Labor at Chicago, Ill.,
Appellee.

Appeal from the District Court of the United States, for the Northern District of Illinois, Eastern Division.

Honorable George T. Page, Judge.

BRIEF AND ARGUMENT FOR APPELLANTS.

OTTO CHRISTENSEN,
Counsel for Appellants.

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

HERBERT MAHLER, JOSEPH OATES, PETRO NIGRA, JOHN AVILLA and WILLIAM MORAN,
Appellants,

vs.

HOWARD EBY, Inspector in Charge, Immigration Service, United States Department of Labor at Chicago, Ill.,
Appellee.

Appeal from the District Court of the United States, for the Northern District of Illinois, Eastern Division.

Honorable George T. Page, Judge.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF THE CASE.

These cases come before this Court on an appeal from the final judgment of the United States District Court for the Northern District of Illinois, dismissing the several petitions for habeas corpus of the relators and remanding them to the custody of Howard Eby, Inspector in charge, Chicago Division of the United States Department of Labor, for deportation. The Department of Labor proceeded against these relators under the following act of Congress:

"An act to deport certain undesirable aliens and to deny readmission to those deported.

(Act of May 10, 1920, Ch. 174, 41 Stat. L593.)

Sec. 1. That aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall upon the warrant of the Secretary of Labor,

be taken into his custody and deported in the manner provided in Sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the Immigration of Aliens to and the residence of aliens in the United States," *if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States,* to wit:

(1) All aliens who are now interned under Section 4067 of the Revised Statutes of the United States and the proclamations issued by the President in pursuance of said section under date of April 6, 1917, November 16, 1917, December 11, 1917, and April 19, 1918, respectively.

(2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or Parts of Acts, the judgment on such conviction having become final, namely:

(*a*) An Act entitled, 'An Act to punish acts of interference with foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917, or the amendment thereof approved May 16, 1918:

(*b*) An Act entitled, "An Act to prohibit the manufacture, distribution, storage, use and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use and possession of the same, and for other purposes,' approved October 6, 1917;

(*c*) An Act entitled, 'An Act to prevent in time of war departure from and entry into the United States contrary to the public safety,' approved May 22d, 1918;

(*d*) An Act entitled, 'An Act to punish the wilful injury or destruction of war material or of war premises or utilities used in connection with war material, and for the other purposes,' approved April 20, 1918;

(*e*) An Act entitled, 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May 18, 1917, or any amendment thereof or supplement thereto;

(*f*) An Act entitled, 'An Act to punish persons who make threats against the President of the United States,' approved February 14, 1917;

(*g*) An Act entitled, 'An Act to define, regulate and punish trading with the enemy, and for other purposes,' approved October 6, 1917, or any amendment thereof;

(*h*) Section 6, of the Penal Code of the United States.

(3) All aliens who have been or may hereafter be convicted of any offense against Section 13 of the said Penal Code committed during the period of August 1, 1914, to April 6, 1917, or a conspiracy occurring within said period to commit an offense under said Section 13, or of any offense committed during said period against the Act entitled, 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, in aid of a belligerent in the European war. (41 Stat. L. 593.)

Sec. 2. That in every case in which any such alien is ordered, expelled or excluded from the United States, under the provisions of this Act, the decision of the Secretary of Labor shall be final. (41 Stat. L. 594.)

Sec. 3. That in addition to the aliens who are by law now excluded from admission into the United States all persons who shall be expelled under any of the provisions of this Act shall also be excluded from readmission. (41 Stat. L. 594.)"

The warrants of arrest were all issued by the Department of Labor on June 2, 1921. The warrants of arrest were all similar in form, except that in the cases of James A. Oates and Petro Nigra, the warrant charged them with a violation of the Immigration Act of February 5,

1917. (P. R. 52 and 53.) Save for the fact that in these two instances the warrant alleged that the act was passed on February 5, 1917, in place of May 10, 1920, they were all identically the same and charged the appellants as follows:

> "That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final; and that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an act entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May 18, 1917, or any amendment thereof or supplement thereto; the judgment on such conviction having become final. (P. R. 51-55.)"

On June 14, 1921, a hearing on the warrants of arrest was accorded each of the appellants. (P. R. 56.) At these hearings, the Immigration Inspector read a list of questions to each of the appellants designed to elicit information concerning their arrival in the country, occupation and family relations. Aside from this general information, the record made by the Immigration Inspector in each case, except that of Petro Nigra and John Avilla, consisted of admissions that they were tried "before Judge Landis for violation of Federal law" and were "sentenced to prison at Leavenworth" and were at the time of the hearing "serving time under that sentence"; and the introduction in evidence of an indictment identified as Exhibit A (P. R. 73), a certified copy of the judgment of the United States District Court, identified as Exhibit B (P. R. 100), and a copy of the judgment and

opinion of the United States Circuit Court of Appeals, identified as Exhibit C. (P. R. 107.)

In the case of Petro Nigra (P. R. 63-65) no questions were asked him concerning his conviction and sentence and no admissions made by him respecting a conviction and sentence; nor were Exhibits A, B and C introduced in evidence against him. The sole evidence in his case consisted of the information, preliminary in character, concerning his arrival in the country, occupation, etc. (P. R. 63.)

Thereafter, on to wit, the 8th day of November, 1921, the Secretary of Labor issued warrants for the deportation of each of the appellants reciting therein that he finds from the evidence adduced at the hearing accorded the appellants by Immigrant Inspector C. H. Paul, that the appellants since August 1, 1914, have been convicted of a violation of the Espionage Act and the Conscription Act, **but fails to make any finding that the appellants are undesirable residents of the United States.** (P. R. 117-122.)

Thereafter, on, to wit, the 20th day of May, 1922, the appellants filed their several petitions for writs of habeas corpus, which said several petitions for writs of habeas corpus were on, to wit, the 4th day of November, 1922, by order of Court, dismissed and the appellants remanded to the custody of the Immigrant Inspector. Theretofore, on the first day of November, A. D. 1922, the District Court ordered that the cases of the several petitioners be consolidated. (P. R. 26.)

To correct the errors and reverse the judgment of the trial Court, the appellants have taken an appeal to this Honorable Court.

The grounds upon which the appellants claim that their detention and custody under said purported warrants of deportation is illegal and void, are as follows:

First. We contend that the Act of Congress of May 10, 1920, is invalid and unconstitutional, as it is in violation of Section 1, Article 1, of the Constitution of the United States and Article 5 of the amendments of the Constitution of the United States for the following reasons (A. E., P. R. 37):

1. That by the following language in Section 1, of said Act, "if the Secretary of Labor after hearing, finds that such aliens are undesirable residents of the United States" Congress has attempted to delegate legislative power to a ministerial and executive officer.

2. It is impossible to ascertain or determine what classes of aliens do or do not fall within the purview of the statute, since under the Act, the liability of any alien who has been convicted of any of the offenses specified in said Act to deportation is made to depend on, "if the Secretary of Labor, after hearing, finds that *such* aliens are undesirable residents of the United States."

That Congress by providing that aliens who have been convicted of certain offenses shall be deported "if the Secretary of Labor, after hearing, finds that *such* aliens are undesirable residents of the United States" attempted to vest in the Secretary of Labor, unregulated by rule, standard or criterion, the discretion of enforcing said Act against aliens who have been convicted of offenses therein specified. That said clause of Section 1 attempts to delegate to the Secretary of Labor the power to determine what aliens convicted of certain offenses specified in said Act shall or shall not be deported.

3. That said clause "if Secretary of Labor, after hearing, finds that *such* aliens are undesirable residents

the United States" upon which the enforcement of the entire Act is made to depend, is void for uncertainty and indefiniteness, for the reason that said Act furnishes no standard or criterion by which it may be ascertained whom Congress considered as undesirable or desirable aliens.

Second. That the taking of the liberty of a person by law, the enforcement and administration of which is left wholly to the whim, caprice or will of an executive or administrative officer, does not constitute due process of law within the meaning of Article 5 and Article 14 of the amendments of the Constitution of the United States. (A. E., P. R. 37.)

Third. The purported warrants of deportation are void for the failure to show that the Secretary of Labor has determined upon competent evidence that the appellants were undesirable residents of the United States. A warrant of deportation to be valid must show upon its face that all statutory requirements have been complied with; and no alien can be deported except upon the terms and the conditions as prescribed by Congress.

Fourth. We contend that the charge set forth in the warrant was non-existent at the time of the issuance of said warrant for the reason that the Selective Service Act and the Espionage Act resepectively had been repealed by Congress, and there was no such offense under the Federal Statutes as described in the Warrant of Deportation; and for the further reason that at the time of the issuance of the warrant of arrest, both the Selective Service Act and the Espionage Act had been repealed and there was nothing for Sections A, and E of the Immigration Act of May 10, 1920, to feed upon.

Fifth. 1. There is no evidence in the record of the hearing accorded Petro Nigra that he was convicted of any of the offenses described in the warrant of arrest.

POINTS AND AUTHORITIES.

I.

An Act which is so uncertain and indefinite as not to indicate the matter or thing to which it relates or which furnishes no standard criterion for determining what acts, conduct or persons come within the purview of the same is invalid, viz.:

First. That it constitutes a delegation and surrender of legislative power by the law-making body to the Courts or to executive or administrative officers, as the case may be.

Second. By permitting an arbitrary and unjust discrimination on the part of Courts or executive officers, it is in violation of the constitutional rights of due process of law and equal protection of the law, and if the act be a penal statute, it is also in violation of the constitutional right to be informed of the nature and cause of the accusation.

State v. *Ashbrook*, 154 Mo. 375.
State v. *Rumberg*, 86 Minn. 399.
State v. *West Side Street Ry. Co.*, 146 Mo. 155.
People v. *Briggs*, 193 Ill. 457.
State v. *Caster*, 45 L. A. Ann., 12 So. 739.
State v. *Paitlaw*, 91 N. C. 550.
Johnson v. *State*, 100 La. 32, 636.
State v. *Wentler*, 76 Wis. 89.
Taxer v. *U. S.*, 52 Fed. 917.
Hewit v. *Board of Examiners*, 148 Cal. 590.
Mathews v. *Murphy*, 63 S. W. 785.
Ex Parte Jackson, 45 Ark. 158.
Cook v. *State*, 26 Ind. App. 278.

Czorra v. *Board of Medical Supervisors of the District of Columbia,* 23 D. C. App. Cases 443, 450.

U. S. v. *Reese, et al.,* 92 U. S. 214.

Augustine v. *State,* 41 Tex. Crim. Reports 59.

State v. *Mann,* 2 Ore. 238.

L. & N. R. R. V. Comm., 99 K. 132, 33 L. R. A. 209.

Stoutenberg v. *Frazer,* 16 Appeals, D. C. 229, 48 L. R. A. 220.

State v. *International & Gt. Nor. R. R. Co.,* 165 S. W. 892.

Vol. 8, Ruling Case Law, p. 58.

People v. *Turner,* 55 Ill. 280.

Detroit Creamery Co., et al., v. *Kinnaine,* 264 Fed. 845.

U. S. v. *L. Cohen Groc. Co.,* 255 U. S. 80.

U. S. v. *Penn. R. R.,* 242 U. S. 208.

Amer. Seeding Mach. Co. v. *Comm. of Ky.,* 236 U. S. 660.

Collins v. *Commonwealth of Ky.,* 234 U. S. 634.

International Harvester Co. v. *Ky.,* 234 U. S. 216.

Ex Parte Taft, 284 Mo. 531.

II.

While the manner and method of enforcing a law may be left to the discretion of an administrative officer all laws must operate equally against persons in the same class; a law which vests an administrative officer with a discretion, unregulated by any rule or condition, of enforcing it against any, all or no persons in the same class is invalid.

Yick Wo v. *Hopkins,* 118 U. S. 356.

International Harvest Co. v. *Kentucky,* 234 U. S.

Collins v. *Comm. of Ky.*, 234 U. S. 634.
Amer. Seeding Mach. Co. v. *Comm. of Ky.*, 236 U. S. 660.
U. S. v. *Penn. R. R.*, 242 U. S. 208.
U. S. v. *L. Cohen Groc. Co.*, 235 U. S. 81.
People v. *Klinik Packing Co.*, 214 N. Y. 128.
People v. *Sisson*, 166 N. Y. Supp. 781.
State v. *Tenant*, 110 N. C. 609, 14 S. E. 387.
Noel v. *People*, 187 Ill. 587.
Peterson v. *Lewis*, 78 Ore. 641, 154 Pac. 101.
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Commonwealth v. *Jones*, 73 Ky. 725 (10 Bush.)
Dowling v. *Insurance Co.*, 92 Wis. 63.
People v. *Sholem*, 294 Ill. 204.
State v. *Superior Court*, 193 Pac. 845.
Seattle v. *Gibson*, 96 Wash. 425, 165 Pac. 109.
Los Angeles Co. v. *Hollywood Cemetery Assn.*, 124 Cal. 344, 57 Pac. 153.
State v. *Doering*, 84 Wis. 585, 54 N. W. 1104.
City of Alkhart v. *Murray*, 165 Ind. 304, 75 N. E. 593.
Bear v. *Cedar Rapids*, 124 N. W. 324.
Mayer v. *Rabecke*, 49 Md. 217.
City Council of Montgomery v. *West*, 149 Ala. 311; 123 Amer. St. 33.
Yick Wo v. *Hopkins*, 118 U. S. 356.
Newton v. *Belger*, 143 Mass. 598.
City of Chicago v. *Trotter*, 136 Ill. 430.
Rich v. *City of Naperville*, 42 Ill. App. 222; 33 Ill. App. 206.
Anderson v. *City of Wellington*, 40 Kan. 173.
Sheldon v. *Hoyne*, 261 Ill. 222.
Matter of Frazer, 63 Mich. 396, 406.

III.

The effect of repealing specific statutory offenses which form the basis of government proceedings under other acts, is to also nullify the latter legislation, for it no longer has anything to "feed upon".

Pettibone v. *U. S.*, 148 U. S., 179.
Hicks v. *U. S.*, 256 Fed. 707.
Federal Case No. 475 Anonymous.
Kelder v. *The State*, 12th Md. 222.
State v. *Mason*, 108 Ind. 48.
Jordan v. *State*, 15 Ala. 746.
State v. *Lang*, 78th M. C. 571.
Commonwealth v. *Marshall*, 28 Mass. 350, 351.
State v. *Smith*, 56 Ore. Rpts. 21.
Halfin v. *State*, 5 Tex. Crim. Appls.

IV.

A warrant of deportation must be valid upon its face and show that all the statutory requirements have been complied with, while the technical nicety essential in an indictment or information is not required, the warrant of arrest or deportation must set forth substantially all the facts and elements which by statute are made grounds for deportation.

In re: See Ho. How, 101 Fed. 115.
Ex Parte Gregory, 210 Fed. 680.
Gonzales v. *Williams*, 192 U. S. 1.
Lewis v. *Frick*, 189 Fed. 146.
Ex Parte Saracenco, 182 Fed. 955.
U. S. v. *Sibray*, 178 Fed. 144.

V.

Before any administrator or executive officer can deport any alien, the right must be clearly and explicitly conferred by act of Congress.

U. S. v. *Hernet*, 156 Fed. 285.
In re Korammehl, 87 Fed. 314.

VI.

There must be some evidence to sustain the charge upon which the warrant of deportation is based.

Frick v. *Lewis*, 233 U. S. 291.
U. S. v. *Uhl*, 211 Fed. 628.
U. S. v. *International Mercantile Marine Co.*, 114 C. C. C. 370.
U. S. v. *Williams*, 190 Fed. 897.

ARGUMENT.

Act of May 10, 1920, void.

The Immigration Act of May 10, 1920, is void, for the reason that it is in violation of Section 1, Article 1, of the Constitution of the United States, and Article 5, of the Amendments to the Constitution of the United States. We contend that the enforcement of this Act, as we read it, is made to depend upon the condition "if the Secretary of Labor, after hearing, finds that *such* aliens are undesirable residents of the United States". The express language of the Act excludes any other construction. This condition strikes us as being about as indefinite and uncertain a condition as Congressional ingenuity could invent. If the condition upon which the enforcement of the Act, is made to depend, is *incapable* of *ascertainment* or *determination*, it is likewise impossible to determine when the Act shall be enforced.

The question, "who are, or are not desirable residents of the United States", is, perhaps, one on which men of ordinary intelligence will invariably disagree. The answer in each individual case will depend upon the racial, social or religious bias of the particular person to whom the question is submitted for determination. This clause, as we interpret it, simply means whatever Secretary of Labor in each case may want it to mean. The Secretary of Labor can refuse to deport any alien who has been convicted of any offense specified in the Act; or he can deport every alien who has been convicted of any of the offenses named in the Act. The Act, as written, vests in the Secretary of Labor, the widest possible opportunities for arbitrary discrimination.

As an answer, it may be suggested that Congress has the power to provide for the deportation of all aliens because of their conviction of one of the named offenses, regardless of the determination of the alien's desirability or undesirability as a resident of the United States. We readily accede to the proposition that Congress has complete power to exclude any or all aliens for any reason that may seem to it to be proper. In fact, under the decisions of this Court, Congress need not even provide as a ground for deportation conduct which would probably become the subject matter of the penal statute. However, Congress by providing that aliens who have been convicted of the named offenses shall be deported "if the Secretary of Labor, after hearing, finds that *such* aliens are undesirable residents of the United States", has plainly indicated that aliens convicted of such offenses shall not be deported *unless* they are *proved to be undesirable residents.* We say that Congress having thus spoken, and then having failed to define the term "undesirable residents", it is impossible to ascertain the intent of Congress.

No one can ascertain whom Congress desires removed and whom it desires shall remain in the United States, and if unable to ascertain the will or intention of Congress, we are unable to determine who shall or shall not be deported.

The mere fact that a law defines in clear and unmistakable terms the elements of a public offense, or a ground for forfeiture of a right, which standing alone would constitutionally authorize the penalty imposed, is no ground for sustaining the Act when the certain elements are inseparably connected with uncertain elements in the particular Act.

To illustrate: While a state may, under its police power, punish larceny, a law which provided "that

every undesirable citizen who committed larceny shall be punished," would obviously be unconstitutional. In support of our position, we have in Points I and II of our "Points and Authorities" cited numerous decisions. However, we here set forth for the Court's consideration a few extracts from the opinions of the Courts in what we consider analogous cases.

The Legislature of the State of New York enacted a statute pertaining to employment, which exempted, "Employees if the Commissioner of Labor in his discretion approves." The Court of Appeals of that state said in the case of *People* v. *Klinck Packing Company,* 214 N. Y. 128:

> "The remaining provisions of the statute which exempts, 'Employees, if the commissioner of labor in his discretion approves, engaged in the work of any industrial or manufacturing process necessarily continuous, in which no employee is permitted to work more than eight hours in any calendar day,' presents greater difficulties. In fact, we are compelled to express the belief that it is unconstitutional because of the attempt which the legislature has made to delegate its powers to the commissioner of labor. The proposition is so well settled that we need not cite authorities in its support that the legislature cannot secure relief from its duties and responsibilities by a general delegation of legislative power to someone else. It seems to us that that is precisely and broadly what is here attempted. The provision as a whole means that certain employees shall be exempt if the commissioner of labor in his discretion approves. (L. 1914, Ch. 396.)
>
> The question whether the statute shall take effect in any, all or no cases is left wholly to his volition. Under its terms he has the power without check or guidance, so far as we can perceive, to veto the entire clause and decide that its benefits shall never be extended to any case although it comes within the precise terms of the statute, or to permit the exemption in one case and deny it in another precisely similar one. Of course, it is not to be assumed that

the commissioner of labor would intentionally be arbitrary and unreasonable in the exercise of this power, but nevertheless the Legislature has attempted to confer upon him the opportunity which would permit of these shortcomings and we are to judge of a statute by what is possible under it. In the absence of any guide it might very well happen that an administrative officer with the best of purposes would nevertheless be very fallible in the execution of them."

In the case of *People* v. *Sisson*, 166 N. Y. Supp. 781, the Court said:

"(3,4.) Chapter 521 further conflicts with the constitution in that it attempts to delegate legislative power. The Legislature can no more delegate its power to repeal a law than it can to enact one, and it must follow that it cannot delegate its power to suspend the operation of a law, as that, in effect, is a repeal. This act confers an arbitrary power upon the officials named to 'suspend the privileges' under liquor tax certificates already issued or thereafter to be issued, and to 'prohibit the sale of alcoholic beverages' during the whole or a part of the duration of the present war. No rule or regulation is laid down for the guidance of the officials clothed with this power. There is no limitation even upon the exercise of the power. The power granted is absolute. There is nothing to insure any uniformity of action. The officials are left to act as they deem proper; in a word, they are to legislate. Such an act cannot be upheld. *People* v. *Klinck Packing Co.*, 214 N. Y. 121-138, 140, 108 N. E. 278, Ann. Cas. 1916D, 1051. And a statute which makes an arbitrary classification or permits others to do so is invalid. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 Supp. Ct. 1064, 30 L. Ed. 220; *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150-155, 17 Supp. Ct. 255, 41 L. Ed. 666."

In the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, this Court said:

"It is contended on the part of the petitioners, that the ordinance for violation of which they are severally sentenced to imprisonment, are void on

their face, as being within the prohibitions of the 14th Amendment; and, in the alternative, if not so, that they are void by reason of the administration, operating unequally, so as to punish in the present petitioners what is permitted to others as lawful, without any distinction of circumstances—an unjust and illegal discrimination, it is claimed, which, though not made expressly by the ordinances is made possible by them.

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself, is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised, either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possession, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of commonwealth 'may be a government of laws and not of men.' For, the very idea that one may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

In the case of *Noel* v. *People*, 187 Ill. 587, the Supreme Court of that state passed upon the constitutionality of a statute which provided that the Board of Pharmacy may in their discretion issue permits to parties engaged in business in villages or other localities to sell domestic remedies and proprietary medicines. The Court there said:

> "It is manifest, that Section 8 vests an arbitrary power in the Board of Pharmacy to say who shall, and who shall not, sell the usual domestic and proprietary remedies in villages and other localities, and just exactly what they are allowed to sell. Section 8 in no way regulates or controls the discretion vested thereby in the board. The official discretion, conferred upon the board, is unregulated, and not subjected to any permanent provisions operating generally and impartially. No conditions are prescribed, upon which the permit, authorizing the sale of the usual domestic remedies and proprietary medicines, is to be issued. A law, which thus invests any board, or body of officials, with a discretion, which is purely arbitrary, and which may be exercised in the interest of a favored few, is invalid. It makes an unjust discrimination between persons coming within the same class. A person, firm or corporation engaged in business in a village or other locality may sell these domestic remedies and proprietary medicines if a permit is obtained from the Board of Pharmacy, provided such board sees fit in its discretion, and under such restrictions as it may deem proper, to issue such permit. The board is thus authorized to confer a privilege upon one person, firm or corporation, and to deny the same privilege to any other person, firm or corporation, and is not required to be governed, in doing so, by any fixed rules or regulations, but may be moved thereto only by its own caprice, or favoritism. Laws, thus conferring discretionary and arbitrary power upon statutory officials, are not only invalid for the reasons already stated, but amount in effect to a delegation by the Legislature of its legislative functions to the board or officials in question. The Legislature undoubtedly has the power, in the interest of

the public health to pass a law, regulating the disposition of these domestic remedies and proprietary medicines; but, instead of doing so in Section 8, it has abdicated its own power upon the subject, and conferred such power upon the Board of Pharmacy to be exercised according to the discretion of the board. (*Cicero Lumber Co.* v. *Town of Cicero*, 176 Ill. 9; *City of Cairo* v. *Feuchter*, 159 *id.* 155; *City of Monmouth* v. *Popel*, 183 *id.* 634.)"

Sections A and E of the Immigration Act of May 10, 1920, are not enforcible.

The Immigration Act was amended on May 10, 1920, providing for the deportation of undesirable aliens who had been convicted, or might thereafter be convicted, under certain penal laws. As far as these appellants are concerned, it is limited to two sections of the act. The department seeks to deport these appellants for violation of or conspiracy to violate the penal laws, designated in the Immigration Act of May 10, 1920, as Section A and E, viz, the "Selective Service Act" and the "Conscription Act."

The appellants were convicted and sentenced on August 30, 1918, to five years in the Leavenworth Penitentiary. The "Selective Service Act," which is in part embraced in Count 3, and the "Espionage Act," which is the basis of Count 4 of the indictment, upon which the appellants stand convicted and sentenced, *were repealed by Act of Congress on March* 3, 1921. Subsequent to the repeal of the "Selective Service Act" and the "Espionage Act," on, to wit: the 2d day of June, 1921, these warrants were issued, charging the appellants with having been convicted of the offenses described in Sections A and E of the Immigration Act.

The Immigration Act provides for the deportation of undesirable aliens who have been or may be convicted

of violating certain "acts," then a part of the Statutory Law of the United States. There being no such "acts" in existence as described in Sections A and E of the Amended Immigration Act, at the date deportation proceedings were instituted, Sections A and E of the Immigration Act must fall. Even if these appellants had committed such offenses during the period of the life of said statutes, they would not be subject to prosecution, even though indicted prior to the repeal of said statutes, unless there was some specific clause saving prosecution. The Immigration Act, as we view it, has nothing to feed upon in the way of a "Selective Service Act" or "Espionage Act," since there are now, and were not at the time these proceedings were instituted, any such acts in existence.

Our precise position, in this matter, was before the Court in the case of *Pettibone* v. *United States,* 148 U. S. 179. The defendants were indicted under Section 5399 of the Revised Statutes, for conspiracy "to corrupt and by force and threats, obstruct and impede the due administration of justice" in a United States Court. (P. 201.)

In quashing the indictment, the Court said:

> "The obstruction of the due administration of justice in any court of the United States, corruptly by threats or force, is indeed made criminal, but such obstruction can only arise when justice is being administered. Unless that fact exists, the statutory offense cannot be committed; and, while, with knowledge or notice of that fact, the intent to offend accompanies obstructive action, without such knowledge or notice the evil intent is lacking." (P. 207.)

See also *U. S.* v. *Crafton,* Red. Case 14881, *in re* Wolff, 27 R. 606-612, *U. S.* v. *Cruikshank,* 92 U. S. 542 and *U. S.* v. *U. M. Wells, et al.,* (opinion rendered by Judge Netterer, in the Western District of Washington, Northern District, but not reported).

So, if statutory offenses are repealed, no such offenses can be committed. To illustrate: The effect of repealing specific statutory offenses which form the basis of government proceedings under other acts to forfeit property, impose fines and penalties, declare tools designed for the commission of such offenses contraband, and provide for confiscation of same, is to also, nullify the latter legislation, for it no longer has anything to "feed upon."

Effect of repeal.

We have cited a number of authorities, which we believe sustain our position, in Point III of our "Points and Authorities." We submit, however, a few extracts from the opinions in some of the cases cited for the Court's consideration.

Even when a statute is repealed after the accused has been convicted, judgment must be arrested and if an appeal from a conviction is pending when the statute is repealed the judgment of conviction must be set aside and the indictment quashed even though argument has been heard, and the appeal dismissed.

Hicks v. *the U. S.*, 256 Fed. 707.

Federal case No. 475 anonymous.

In this case the defendant was indicted charged with perjury before Commissioners of Bankrupts. The hearing was before Washington, Circuit Justice, and Peters, District Judge. Judge Washington, delivering the opinion of the Court, said:

> "The offense must not only come within the terms of such law, but the law itself must at the time, be subsisting. It is a clear rule, that if a statute creates an offense, and is then repealed, no prosecution can be instituted for any offense committed against the statute previous to its repeal. The end of punish-

ment is not only to correct the offender, but to deter from committing like offenses. But, if the Legislature has ceased to consider the act in the light of an offense those purposes are no longer to be answered and punishment is then unnecessary."

The Court after reviewing the Repealing Act of December, 1803, directed the jury to find the defendant not guilty. The district attorney in the above case contended that the Repealing Act did not apply for the reason that

> "the doctrine applies only to cases of treason and felony:" (Citing 2 Hawk (P. C.) 87; 1 Hawk (P. C.) 306; 1 Hale (P. C.) 291, 525; 2 Hale (P. C. 190) with the limitations thus contended for the Court did not agree.

In *Kelder* v. *The State*, 12th Md. 222, the defendant was indicted under an act to regulate the issuing of licenses to ordinary innkeepers and traders and was convicted, from which an appeal was taken and the Court said, pending appeal:

> "If the record is properly before us the motion must be granted. It is well settled that a party cannot be convicted after the law under which he may be prosecuted has been repealed, although the offense may have been committed before the repeal. (Citing authorities.)
>
> "The same principle applies where the law is repealed or expires pending an appeal or writ of error from the judgment of an inferior Court. It has frequently been recognized in admiralty cases where property was seized and condemned on the ground that the repeal of a law before the decision in the Court above removed the penalty, and that the Court in disposing of the appeal or writ of error must decide according to existing laws at the time of the final judgment. (Citing authorities.)
>
> "Chief Justice Marshall states the doctrine generally, and not as applicable only to condemnations in admiralty. There seems to be no reason for saying that it shall not govern in other cases of penalty

or fine when pending causes are not excepted in the repealing act and we may consider that the Court of Appeals so regarded this doctrine, for, in the case of *State use of Washington County* v. *The Railroad Company*, 12th G. & J. 437, where the defendant claimed the benefit of an assembly releasing a penalty, the Court relied upon what was said in 5 Cranch, 283, namely:

'The Court is therefore of the opinion that the cause is to be considered as if no sentence had been pronounced and if no sentence had been pronounced, it has been long settled on general principles, that after the expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force, unless some special provision be made for that purpose by statute.' The judgment in a criminal cause cannot be considered as final and conclusive to every intent, notwithstanding the removal of a record to a Superior Court. If this were so there would be no use in making the appeal or suing out of a writ of error. To be sure, it does not operate to stay the execution of the sentence, if the state chooses to proceed on the judgment; but, when deciding in favor of the accused, the reversal will operate so far as possible for his relief. If he be undergoing punishment according to the sentence pronounced, he will be discharged as in the cases of Black 2d, Md. Rpts., 376; and Cochran, 6 Md. Repts. 400, and so if the law be repealed pending the appeal or writ of error, the judgment will be reversed, because the decision must be in accordance with the law at the time of final judgment. Citing Chief Justice Marshall in 1 Cranch, 110, to the effect that, if necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside. See also 3 Howard 534, where the Chief Justice said, that 'the appeal of a law imposing a penalty is of itself a remission of the penalty.' ''

In *State* v. *Lang*, 78th M. C. 571, the defendant was indicted under a statute prohibiting a tenant from moving crops without the lessor's consent. It was contended

that the Act of March 19, 1873, was repealed by that of March 12, 1877, the Court said:

> "It is well settled that the repeal of a statute pending a prosecution for an offense created under it, arrests the proceeding and withdraws all authority to pronounce judgment even after conviction and it is equally clear that no aid can be derived from the last enactment which is necessarily prospective only in its operation, and under the Constitution cannot apply to antecedent acts."

In *Commonwealth* v. *Marshall*, 28 Mass. 350, 351, the defendants were charged with the commission of an offense by disintering a dead body on February 20, 1831, in violation of the statute of March 2, 1815, which was repealed by a statute of February 28, 1831. The Court said:

> "It is clear that there can be no legal conviction for an offense, unless the act be contrary to law at the time it is committed; nor can there be a judgment, unless the law is in force at the time of the indictment and judgment. If the law ceases to operate by its own limitation, or by a repeal at any time before judgment, no judgment can be given."

The warrant of arrest and deportation is void for failure to find that the appellants were undesirable residents of the United States.

We contend that the warrant of arrest and deportation is void for failure to show upon its face that the Secretary of Labor has determined, after hearing, that the appellant was an undesirable resident of the United States. The warrant does not set forth substantially all the essential grounds for deportation. The warrant of deportation must be valid upon its face and show that all the statutory requirements have been complied with. As authority for this proposition, we submit to the Court,

he authorities cited in Point IV of our "Points and Authorities."

In the case of *U. S.* v. *Sifray*, 178 Fed. 144, the Court said:

> "I am constrained to hold that the charge is not sufficiently specific. It is not required that the warrant of arrest should have the formality and particularity of an indictment, but it should give to the alien sufficient information of the specific act or acts which bring him within the excluded classes, so that he can offer testimony in refutation of the charge at the hearing directed to be had by the warrant of arrest in pursuance of the act of Congress and the rules of the department. What woman is he charged with importing, and for what immoral purpose? Was he convicted of or did he admit the commission of a crime? Was it a felony or other crime or misdemeanor involving moral turpitude? If either, what was it? By Paragraph "b" Rule 35, as has been seen, a full statement of the facts must be the basis of the warrant. It is contemplated, therefore, that facts, and not conclusions, must set forth in the warrant."

The power to expel aliens being an inalienable prerogative of Congress, the Secretary of Labor is without power to deport any alien except by strict compliance with the Statute. As authority for this proposition, we submit to the Court the authorities cited in Points IV and V, of our "Points and Authorities".

In re Hornmehl, 87 Fed. 314, the Court said:

> "Rules and regulations may be made to carry out the Statutes and facilitate the exclusion and return of persons belonging to the classes whose immigration Congress has forbidden; *but no mere rule of the department can operate to exclude persons not belonging to one or other of the classes named in the Statutes.*"

The finding of the Secretary of Labor in the case of Petro Negra is an arbitrary one, there being no scintilla of evidence to support the finding.

This Court has held that after a fair hearing is given and full opportunity had to present evidence, and the action taken is not arbitrary, then the decision of the proper officials affirmed by the department is final, *provided there is some evidence to sustain the charge upon which the decision is based.*

In *Frick* v. *Lewis*, 233 U. S. 291, it was said:

> "The question is, whether anything was offered that tends, though slightly to sustain the charge." See cases cited in Point VI of our "Points and Authorities."

It is our position that in the case of *Petro Negra*, there was not the fair hearing the law contemplates. The action of the Department of Labor was arbitrary, and was unsupported by any evidence whatsoever. There must be, as we read the decisions, some evidence, however slight; to satisfy the rule, there must be a scintilla of evidence.

Because of the brevity of the report of the hearing, we give it here in full. (P. R. 644):

> "Q. What is your full, true and correct name?
> A. Pitro Negra.
> Q. By what other name have you been known since?
> A. None.
> Q. What is your complete address?
> A. Federal Prison, Leavenworth, Kansas.
> Q. What is your occupation?
> A. Miner.
> Q. Can you read and write?
> A. Yes.
> Q. Are you married or single?
> A. Single.

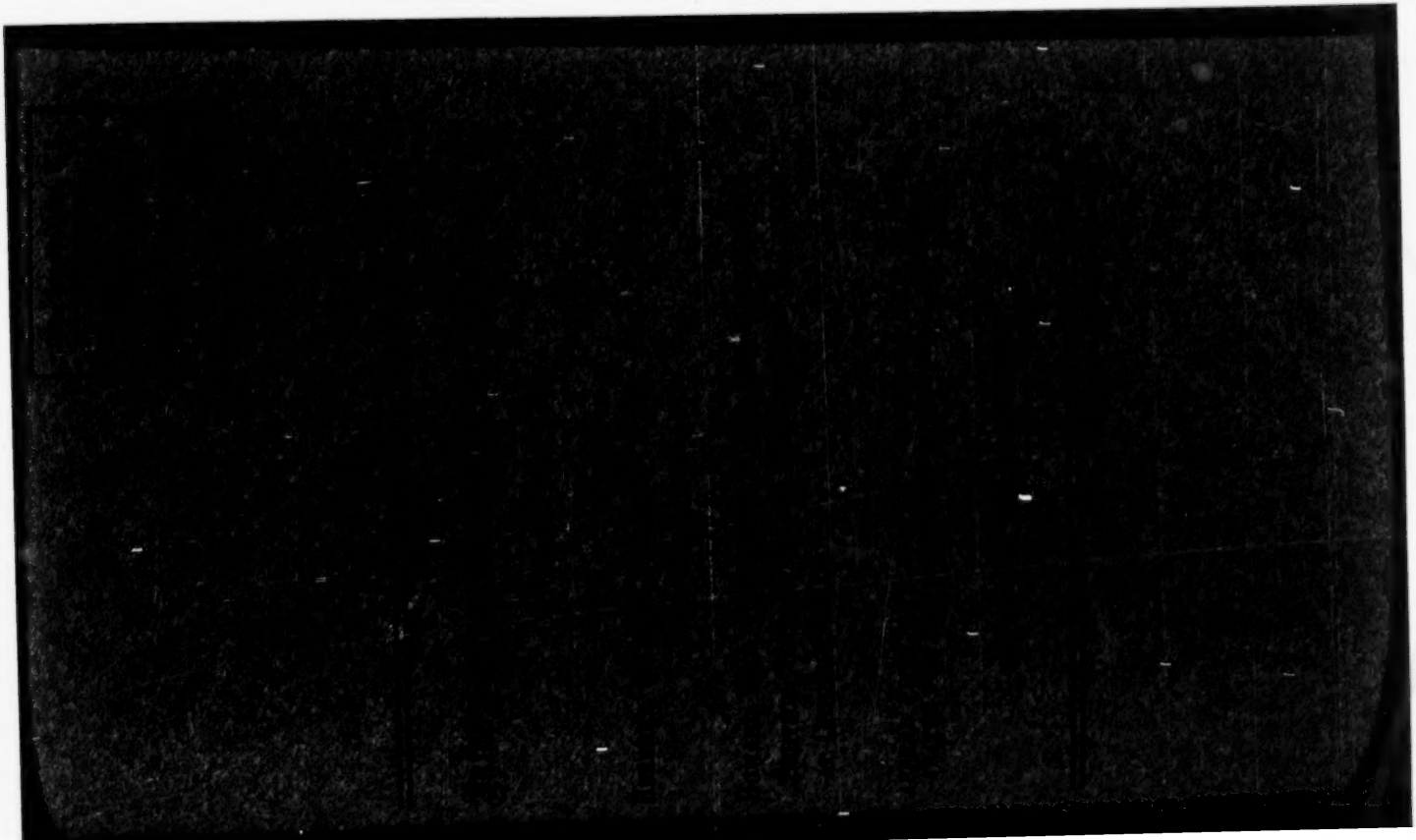
Q. Have you any personal property?
A. No.
Q. When and where were you born?
A. 25th of November, 1884, Castellamonte, Canavese, Sonrino.
Q. Of what country are you a citizen at the moment of this hearing?
A. Italy.
Q. On what do you base your claim to citizenship?
A. Birth.
Q. Have you ever declared your intention to become a citizen of the United States?
A. I make first papers.
Q. Where was your father born?
A. Italy.
Q. Was he ever in the United States?
A. No.
Q. When did you last enter the United States and where. Give full details of time, place and manner of entry?
A. 28th or 29th of December 1903. New York. Champagne 'Trans-Atlantic.'
Q. Have you a passport?
A. Yes.
Q. Where is it?
A. Attorney.
Q. Any near relatives in Italy?
A. Janomie, brother, same town.
Q. Where is your father?
A. Dead."

It is our position that in the case of *Petro Negra*, there proving that the relator had been convicted of the offenses charged in the warrant of deportation.

We respectfully submit that the judgment of the lower Court should be reversed and the appellants ordered discharged.

Respectfully submitted,

Otto Christensen,
Counsel for Appellants.



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Court for the Northern District of Illinois, upon an indictment containing five counts and charging violations of several acts of Congress (R. 73–100). The third count charged violation of Section 5 of the Selective Service Act of May 18, 1917, c. 15, 40 Stat. 76 (R. 96). The fourth charged a violation of Section 4 of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (R. 97). The appellants were found guilty upon all five counts, but the third and fourth only are material here. All of these men save Petro Nigra were sentenced by the Court to be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a period of five years (R. 102–105), while Nigra was sentenced to imprisonment in the same place for eighteen months (R. 106). Thereafter, upon appeal to the United States Circuit Court of Appeals for the Seventh Circuit, it was held that the first and second counts of the indictment were not good (R. 107, 268 Fed. 795). The judgment of the District Court was accordingly modified by striking out the sentences imposed under those counts, and as so modified the judgment was affirmed and became final.

While the appellants were confined in the Federal prison, the Secretary of Labor issued warrants of arrest under the Act of May 10, 1920, c. 174, 41 Stat. 593, charging that each of them was an alien who had been convicted since August 1, 1914, of a violation of the Selective Service Act and of the Espionage Act, and directing that they be taken into custody

and granted a hearing to show cause why they should not be deported. (R. 51–55.)

On June 14th and 15th, 1921, each of the appellants was granted a hearing by an Immigrant Inspector at the Federal Prison at Leavenworth, records of which will be found in the transcript, pages 56–117. After the formal proofs, the Government introduced in evidence the original indictment upon which they had been convicted (marked "Exhibit A"—R. 73–100); a certified copy of the judgment of the District Court in the same case (marked "Exhibit B"—R. 100–106); and the opinion and judgment of the United States Circuit Court of Appeals (marked "Exhibit C"—R. 107–117).

Upon the evidence produced, the Secretary of Labor on November 8th, 9th, and 10th, 1921, issued his several warrants for deportation (R. 117–122).

On May 20, 1922, petitions for writs of habeas corpus were presented to the District Court. (R. 2–18.) The writs were allowed (R. 18–25), and returns having been filed by the respondent, the causes were heard by the District Court on November 1, 1922. After hearing, the several petitions and writs were dismissed. (R. 26.) On November 4, 1922, petitions for appeal to this court were presented (R. 27–37); the appeals were allowed and the several appellants admitted to bail pending the appeal. (R. 43–46.)

The assignments of errors are identical in each case. (R. 37–43.) The contentions of the appellants, which are set forth generally therein, and more specifically in the brief filed in this Court, are as follows:

1. That the Act of May 10, 1920, c. 174, 41 Stat. 593, entitled, "An Act to deport certain undesirable aliens and to deny readmission to those deported," under which the warrant for deportation of each of these aliens was made, is unconstitutional, because, in its application to the appellants, it is an *ex post facto* law.

2. That the Selective Service Act and the Espionage Act were repealed before these deportation proceedings began, wherefore the warrants of deportation made upon the ground that the aliens had violated those acts, were void and wanting in due process.

3. That the Act of May 10, 1920, is unconstitutional, because it delegates legislative power to the Secretary of Labor, and because it is so vague, indefinite, and uncertain that deportation under it deprives appellants of due process of law.

4. That the warrants of deportation are void, because they fail to state that the Secretary of Labor has found that the aliens were "undesirable residents of the United States."

5. That in the case of Petro Nigra there was no evidence that he was convicted of a violation of any Federal law.

We shall discuss these five objections seriatim.

ARGUMENT.

I.

The act of May 10, 1920, is not an ex post facto law.

The first assignment of error (R. 37) sets forth that the Act of May 10, 1920, c. 174, 41 Stat. 593 is void because, in its application to these Appellants, it is an *ex post facto* law. The Act, which is printed in full in the Brief for Appellants (pp. 1–3), provided *inter alia*, that the following aliens may be deported:

> (2) All aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts, the judgment on such conviction having become final, namely:

Then follows an enumeration of eight Acts of Congress, including—

(a) The Espionage Act of June 15, 1917, and

(e) The Selective Service Act of May 18, 1917,

of the violation of which each of the Appellants had been convicted.

It appears from the record that the offenses were committed between May and September, 1917 (R. 73–100), and that the verdict of the jury was rendered on August 17, 1918 (R. 101), prior to the enactment of the Act of 1920 and the issuance of the warrants of arrest by the Secretary of Labor on June 2, 1921 (R. 51–55).

These facts do not, however, render the constitutional prohibition against *ex post facto* laws applicable

here; for it is well settled by the decisions of this Court that deportation is not a punishment and proceedings for the purpose are not criminal cases (*Fong Yue Ting* v. *United States*, 149 U. S. 698, 730; *Bugajewitz* v. *Adams*, 228 U. S. 585, 591); and that the constitutional prohibition forbids only retroactive *criminal* legislation (*Watson* v. *Mercer*, 33 U. S. 88, 110; *Carpenter* v. *Pennsylvania*, 58 U. S. 456, 463; *Locke* v. *New Orleans*, 71 U. S. 172, 173; *Johannessen* v. *United States*, 225 U. S. 227, 242).

Congress did not by the Act of 1920 impose any additional penalty or punishment for the crimes theretofore committed, but merely determined that the United States no longer desired to extend its national hospitality to the class of aliens described therein.

The case upon this point is quite similar to that of *Hawker* v. *New York*, 170 U. S. 189, decided by this Court. That case involved an act passed by the legislature of New York on May 9, 1893, which provided that any person who after being convicted of a felony should practice medicine in New York State should be guilty of a misdemeanor. In 1896 the defendant was indicted under that act because he had been convicted of a felony in 1878 and had practiced medicine in New York after 1893. It was urged that the application of the statute to one who had been convicted of a felony prior to its passage rendered it *ex post facto*. The Court held, however, that the Act of 1893 did not impose any additional

penalty or punishment upon persons previously convicted, but was merely a reasonable and proper exercise of the police power, which was designed to protect the public from practicing physicians who were not of good moral character, and to that end provided that persons whose bad character had been proved by conviction of a felony should not be permitted to practice medicine.

As the Act of 1920 is not a criminal statute, the objection that it is an *ex post facto* law is not well taken.

II.

The repeal of the selective service act and of the espionage act did not affect the operation of the act of May 10, 1920.

It is urged in the third assignment of error (R. 37) that inasmuch as the Selective Service Act and the Espionage Act were repealed on March 3, 1921, no alien convicted of a violation of those acts could thereafter be deported under the Act of May 10, 1920.

It is a familiar and well-settled principle that when a criminal statute is unreservedly repealed, no one who may have violated it prior to its repeal may thereafter be further prosecuted, convicted, or punished under it. The cases cited by counsel for the appellant (Brief, pp. 21–24) fully sustain, and we do not dispute this rule. But it does not apply to this case.

The whole of the Appellants' argument upon this point is based upon the theory that the Act of 1920 is a criminal act. We may concede that if it imposed

an additional penalty for violation of the Selective Service and Espionage Acts, their repeal would effectually prevent the imposition of such penalty upon the Appellants in these proceedings begun June 2, 1921, after the repeal. But it is evident from a reading of the Act that it is not a criminal statute, but merely an Act which classified aliens and provided for their deportation. It created a class liable to deportation, consisting of all those who since August 1, 1914, had been convicted of a violation of any of the Acts of Congress recited in it. It seems almost too clear for serious argument that aliens, such as the Appellants in the instant case, who were convicted of violating the Selective Service and Espionage Acts while those Acts were in full force and effect, and who are clearly within the class rendered liable to deportation under the Act of 1920, *are not removed from that class* merely because the Acts under which they were convicted were repealed.

III.

The act of May 10, 1920, does not (a) delegate legislative power nor (b) deprive the Appellants of due process of law in violation of the Constitution.

The Act provides in its first section, that—

> Aliens of the following classes, in addition to those for whose expulsion from the United States provision is made in the existing law, shall, upon the warrant of the Secretary of Labor, be taken into his custody and deported in the manner provided in Sections 19 and 20 of

> the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States," *if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States*, to wit: [Here follows an enumeration of the several classes.]

The Appellants urge that the clause of this Act which we have italicized renders the whole obnoxious to the Constitution for two reasons. First, it is said that there is an unconstitutional delegation of legislative power, because Congress has committed to the Secretary of Labor the function of determining what aliens are "undesirable residents." Second, that this clause is so vague and uncertain as to render the whole Act unconstitutional, because Congress has not provided within the Act any standard of *desirability*, according to which the Secretary of Labor may judge who are and who are not "undesirable residents"; wherefore the action of the Secretary in ordering the deportation of the Appellants was necessarily arbitrary and deprived them of liberty without due process of law. The statement of these objections shows that both rest upon the alleged uncertainty of the words "undesirable residents."

(a.)

The nature of the power to exclude or expel aliens raises a grave doubt at the outset whether the objection based upon the alleged delegation of legislative power may be urged against the Act of 1920. The

power differs fundamentally from the more ordinary and frequently exercised powers of Congress which were involved in the multitude of cases cited by the Appellants. This Court has pointed out in a number of leading cases that the power to exclude or expel aliens is an inherent and inalienable incident of national sovereignty, political in character, and vested in the political departments of the Government.

Mr. Justice Gray, speaking for the Court in *Fong Yue Ting* v. *United States*, 149 U. S. 698, 713, said:

> The power to exclude or to expel aliens, being a power affecting international relations, is vested in the political departments of the Government, and is to be regulated by treaty or by act of Congress, and to be executed by the executive authority according to the regulations so established, except so far as the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the Constitution, to intervene.

And the same conclusion is stated in *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659, *Lem Moon Sing* v. *United States*, 158 U. S. 538, 543 and *Li Sing* v. *United States* 180 U. S. 486.

The power to exclude or expel aliens is essentially a part of the control of our international affairs, with which the Executive and Congress are jointly charged.

> Subjects which are within the legislative jurisdiction of Congress may frequently touch upon or affect international relations, and in such cases it is competent for Congress to dele-

> gate to the President power with regard to such relations. So in dealing with international commerce Congress may give to the President authority to declare embargoes, and in levying tariffs it may vest in the President the power to suspend or enforce duties in his discretion in order to procure reciprocal benefits in other countries. (Burdick on The Law of the American Constitution, Sec. 35, page 79.)

Mr. Justice Harlan cited in the opinion in *Field* v. *Clark*, 143 U. S. 649, 682–692, numerous instances wherein Congress since the earliest days of the Republic had committed to the President or to executive officers acting under and responsible to him, broad discretionary powers in dealing with international commerce. Notable among these was the authority given to the President by the Act of June 4, 1794, to lay an embargo on all ships and vessels in the ports of the United States, "whenever in his opinion, the public safety shall so require," and under regulations to be continued or revoked "whenever he shall think proper"; by the Act of February 9, 1799, to remit and discontinue, for the time being, the restraints and prohibitions which Congress had prescribed with respect to commercial intercourse with the French Republic, "if he shall deem it expedient and consistent with the interest of the United States," and "to revoke such order, whenever, in his opinion, the interest of the United States shall require"; by the Act of December 19,

1806, to suspend, for a named time, the operation of the nonimportation act of the same year, "if in his judgment the public interest should require it"; and by the Act of March 6, 1866, to declare the provisions of the act forbidding the importation into this country of neat cattle and the hides of neat cattle, to be inoperative, "whenever in his judgment" their importation "may be made without danger of the introduction or spread of contagious or infectious disease among the cattle of the United States." While the decision in the case did not involve the constitutionality of these several acts, the Court expresses no doubt as to their validity. The opinion goes on to say (pp. 690–691):

> While some of these precedents are stronger than others, in their application to the case before us, they all show that, in the judgment of the legislative branch of the Government, it is often desirable, if not essential for the the protection of the interests of our people, against the unfriendly or discriminating regulations established by foreign governments, in the interests of their people, to invest the President with large discretion in matters arising out of the execution of statutes relating to trade and commerce with other nations.

Another instance of the grant of broad powers over a similar subject-matter, is found in the Act of March 2, 1897, 29 Stat. 604, which made it unlawful to import tea "which is inferior in purity,

quality, and fitness for consumption to the standards" fixed and established by the Secretary of the Treasury. This Act was sustained by the Court in *Buttfield* v. *Stranahan*, 192 U. S. 470; *Buttfield* v. *Bidwell*, 192 U. S. 498; and *Buttfield* v. *United States*, 192 U. S. 499.

And in the immigration acts prior to 1920 there is to be found a grant of broad discretionary power to the executive officers to determine who are persons "likely to become a public charge." (Acts of August 3, 1882, c. 376, 22 Stat. 214; February 5, 1917, c. 29, 39 Stat. 874.) In all of the constitutional battles which have been fought over the alien laws, we have not found this a *forum belli*, and it seems obvious that there is no greater exercise of discretion necessary to determine under the Act of 1920 who are "undesirable residents," than is required to ascertain under the Act of 1917 who are "likely to become a public charge." The former may require the exercise of judgment, but the latter requires in addition some measure of the gift of prophecy.

The nature of the power to exclude or expel aliens, warrants the granting of large discretion to the executive officers. If, however, we leave out of account the peculiar character of the power and regard the Act of 1920 merely as a part of our municipal law, we think it is clearly constitutional.

Congress did all which it, as the legislative power, was obliged to do when it provided that the aliens

should be deported if found to be "undersirable residents." The duty of finding who are such, is one which may be delegated.

It is well settled that Congress may delegate to the Interstate Commerce Commission authority to determine what are reasonable rates and what are discriminatory practices, (*Interstate Commerce Commission* v. *Illinois Central Railroad*, 215 U. S. 452; *Interstate Commerce Commission* v. *Chicago, Rock Island, etc., Railroad*, 218 U. S. 88); and that similar State statutes delegating like power to public service commissions are constitutional. (*Wichita R. R.* v. *Public Utility Commission*, 260 U. S. 48). The terms "unreasonable" and "discriminatory" are no more definite in themselves or in their application to their subject matter than is the term "undesirable" when applied to aliens resident in the United States.

In the case of *Miller* v. *Strahl*, 239 U. S. 426, a statute of Nebraska provided that:

> It shall be the duty of every proprietor, or keeper of such hotel or lodging house, in case of fire therein to give notice of same to all guests and inmates thereof at once and *to do all in their power* to save such guests and inmates.

The constitutionality of this Act was attacked upon the same grounds which are urged here, but without avail for this Court held that the standard of diligence required of the hotel owner was set forth with sufficient precision.

In *Mutual Film Corporation* v. *Ohio Industrial Commission*, 236 U. S. 230, a statute of Ohio which provided that "only such films as are in the judgment and discretion of the Board of Censors of a moral, educational, or amusing and harmless character, shall be passed and approved by such Board." It was insisted that the standards fixed by the broad language of this Act were not sufficiently definite and delegated to the Board of Censors too large a measure of discretion, but the Act was sustained by this Court as a lawful and proper delegation of power. It is true, as urged by the Appellants in their brief, that two men may differ as to who are "undesirable residents of the United States," but we feel confident that there would be less divergence of opinion upon this question than upon what pictures are of a "moral, educational, or amusing and harmless character."

Whether treated as an exercise of the power to control and manage international affairs or merely as a municipal regulation, we think the Act of 1920 is not invalid as an unconstitutional delegation of legislative power.

(b.)

Nor is it so vague, uncertain, and indefinite as to deprive the Appellants of due process of law. To support the contention that the statute is unconstitutional upon this ground, counsel have cited a wealth of authorities, of which *United States* v. *Cohen Grocery Company*, 255 U. S. 81, and *International*

Harvester Company v. *Kentucky*, 234 U. S. 216, are fairly typical.

In the *Cohen Grocery Company Case* section 4 of the Food Control or Lever Act was declared unconstitutional because it penalized the making of "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries," without fixing any measure or standard by which one might determine when a rate or charge was unjust or unreasonable. And in the *International Harvester Company Case*, an antitrust statute of Kentucky was held unconstitutional because it penalized any agreement of manufacturers formed for the purpose of enhancing the price of their products above their *real value* (which was defined as "its market value under fair competition and under normal market conditions"), but fixed no standard by which it was possible to ascertain "real value."

It is an inherent infirmity of statute law that it must be expressed in words, which at best are but an uncertain medium for the conveyance of ideas. Some words are general, others specific, and words which convey a definite meaning when related to one subject may be vague and indefinite when related to another. In *Miller* v. *Strahl*, 239 U. S. 426, 434, Mr. Justice McKenna pointed out that "Rules of conduct must necessarily be expressed in general terms and depend for their application upon circumstances, and circumstances vary." Absolute precision in the language of a statute is neither pos-

sible nor necessary, and it is not essential to the validity of an act of Congress that it carry a dictionary as a rider. As we understand the decisions in the two cases cited, an act of Congress need not embody *within itself* a precise and accurate definition of all the adjectives used in it. It is sufficient if a standard by which they may be measured or a definition of them may be found elsewhere.

The distinction between the *Cohen Grocery* and *International Harvester* cases on the one hand, and *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86, *Nash* v. *United States*, 229 U. S. 373, *Fox* v. *Washington*, 236 U. S. 273, *Miller* v. *Strahl*, 239 U. S. 426, and *Omaechevarria* v. *Idaho*, 246 U. S. 343, on the other, was clearly pointed out by Mr. Chief Justice White by showing that in the former no standard could be found either in the Act of Congress *or elsewhere*, while in the latter "*either* from the text of the statutes involved *or the subjects with which they dealt*, a standard of some sort was afforded" (255 U. S. 81, 92).

Omaechevarria v. *Idaho*, 246 U. S. 343, is an illustration. There it was urged that a penal statute which forbade any person to graze sheep "on any cattle range previously occupied by cattle, or upon any range usually occupied by any cattle grower," was so indefinite in terms as to violate the Fourteenth Amendment since it failed to provide for the ascertainment of the boundaries of a "range" or for determining what length of time is necessary to constitute

a prior occupation a "usual" one within the meaning of the act. But while the standard could not be found in the act, it could be found in the customs which existed among the people living near the cattle ranges. The Act was sustained because, as Mr. Justice Brandeis said (p. 348): "Men familiar with range conditions and desirous of observing the law will have little difficulty in determining what is prohibited by it."

In the instant case, the Act of 1920 does not define "undesirable residents," it is true, but this term is well known and understood and has a precise and definite meaning to the Department of Labor and to persons familiar with immigration legislation. The limits of the concept are found in the numerous other Acts of Congress regulating immigration and providing for the exclusion and expulsion of aliens. They furnish a standard by which the "desirability" of aliens may be tested. They indicate clearly, for example, that persons who are mentally defective, or morally perverted, paupers, vagrants, persons afflicted with contagious diseases, criminals, polygamists, anarchists, those who advocate the overthrow of this Government by force, or are members of an organization which advocate such overthrow, illiterates, and a number of other classes are, in the judgment of Congress, *undesirable*.

There are in the United States to-day thousands of aliens who, measured by the present standards of desirability which Congress has established, are un-

desirable. Some entered prior to the establishment of those standards; others have become undesirables since their entry. Congress has not provided for the wholesale deportation of all of these persons, but in the Act of May 10, 1920, c. 174, 41 Stat. 593, it has described certain classes of aliens who are made liable to deportation, and has provided that of aliens of those classes the Secretary of Labor should deport such as he shall find, after hearing, to be "undesirable residents of the United States."

Accordingly in the practical administration of the Act the Secretary of Labor must determine first whether an alien falls within the classes defined by the Act of 1920, and, if this be found in the affirmative, then, whether he is an "undesirable resident." In making these findings he applies the standards fixed by Congress.

If we assume for the purposes of this case that no discretion whatever is vested in the Secretary of Labor, and that the prior acts of Congress furnish a precise and accurate definition of "undesirable" which he can not vary or extend, nevertheless the judgment of the court below must be sustained and the Appellants deported. It clearly appears from the record that these particular aliens are included within the classes enumerated in the Act of 1920, and that they are also included within those which Congress by the Act of October 16, 1918, c. 186, 40 Stat. 1012, as amended by Act of June 5, 1920, c. 251, 41 Stat. 1008, has branded as "undesirable."

Section 1 (c) of the Act of 1918 provides:

> Aliens * * * who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) The overthrow by force or violence of the Government of the United States * * * (3) the unlawful damage, injury, or destruction of property, or (4) sabotage.

It appears from the record in this case that the immigration officers had before them in evidence an indictment upon which each of the Appellants had been convicted by a jury, in which it was charged that there existed in the United States (R. 77)—

> a certain organization of persons under the name of Industrial Workers of the World, commonly called "I. W. W.'s" * * * that said defendants, during said period have been members of said organization and among those known in said organization as "militant members of the working class" and "rebels" holding various offices, employments, and agencies therein; and * * * severally have been actively engaged in managing and conducting the affairs of said association, propagating its principles by written, printed, and verbal exhortation, * * * that said organization, before and during said period of time, has been one for supposedly advancing the interests of laborers as a class (by members of said organization called "the workers" and "the proletariat"), and giving them complete control and ownership of all property * * *

> through the abolition of all other classes of society * * * such abolition to be accomplished not by political action or with any regard for right or wrong, but by the continual and persistent use and employment of unlawful, tortious, and forcible means and methods, involving threats, assaults, injuries, intimidations and murders upon the persons, and the injury and destruction * * * of the property of such other classes, the forcible resistance to the execution of all laws, and finally the forcible revolutionary overthrow of all existing governmental authority, in the United States * * *.

Here then was evidence, uncontradicted and ample to sustain a finding by the Secretary of Labor that the Appellants were in fact "undesirable residents of the United States." The aliens did not in any of the five cases offer any countervailing proof.

IV.

The warrants were valid.

It is urged, however, that the original warrants of arrest were defective in that they did not charge that the aliens were undesirable residents of the United States. They did charge that the aliens had been "found in the United States in violation of the Act of May 10, 1920," which necessarily implied the charge that they were undesirable residents. But, in any event, defects in the original warrant of arrest do not constitute a ground for discharge on *habeas corpus* from an order of deportation made after a hearing. (*Nishimura Ekiu* v. *United States*, 142 U. S. 651, 662.)

And it is further urged that the final orders of deportation are defective because they do not contain or purport to be based upon a specific affirmative finding that the aliens were "undesirable residents." We think the making of the order necessarily implied that the Secretary of Labor had found that the aliens were undesirable residents. No technical formalities are required of such orders. (*Nishimura Ekiu* v. *United States*, 142 U. S. 651.)

V.

The record contains sufficient evidence to sustain the order made against Petro Nigra.

Finally it is contended that in the case of Petro Nigra the order for deportation is void, because the record in his case contains no evidence of the fact that he had been convicted of any violation of the Selective Service Act or the Espionage Act.

It is a curious fact that in the case of this one alien the report of the hearing (R. 63–65) does not show that the indictment, verdict, etc., in the case in which he was convicted were formally offered in evidence. It does appear, however, that the hearing was held before C. H. Paul, the same inspector who conducted the hearings of the other Appellants; that it was held at the same place, at the same time; that the same stenographer took and transcribed the testimony; and that the alien was represented by the same attorney. It also appears that a stipulation was signed by counsel and filed in the District Court (R. 51) which contained the following:

It is further stipulated by and between the above-named relators and Howard D. Ebey, that the following Exhibits A, B, and C, are the Exhibits mentioned in the above testimony taken at the hearings on the warrants of arrest, *and that the same were there introduced in evidence in each case*, on behalf of the United States Department of Labor.

It is further stipulated by and between the parties that said warrants of arrest, testimony of the hearings on said warrants of arrest, attached to petitions of habeas corpus and the exhibits introduced in evidence upon said hearings marked Exhibits A, B, and C, and the warrants of deportation, *have been introduced and received in evidence* in the hearing upon said writs of habeas corpus.

Exhibits A, B, and C, referred to, were the indictment (R. 73), the verdict and the several judgments (R. 100), and the opinion of the Circuit Court of Appeals (R. 107), respectively, in the case in which Petro Nigra, with the others, was convicted. The judgment shown on page 106 of the Transcript relates to Nigra alone, and could scarcely have become a part of the record unless at some stage of the proceeding it had been introduced.

There is nothing in the Acts of Congress under which this order was made which requires the keeping of a formal record of the proceedings, and in the absence of such a requirement the failure to keep any record at all will not invalidate an order of deportation, if it be otherwise valid. (*Nishimura Ekiu* v. *United States*, 142 U. S., 651, 663.)

It is evident from the facts we have stated that at the time of the hearing the Immigration Officer had before him competent evidence to sustain the order and that the alien and his counsel were fully aware of the nature of the charge and of the evidence in the possession of the officer. The mere omission to formally note the offer of evidence upon the record can not invalidate the order made, either upon the ground of informality or because the alien was thereby deprived of due process.

CONCLUSION.

However men may differ as to the precise limitations of a definition, when the object itself is presented they have little difficulty in identifying it. The record in this case presents a picture of five aliens whom not one American citizen in a hundred would hesitate to pronounce an "undesirable resident of the United States." If the case should arise in which the Secretary of Labor abuses the discretion vested in him by the Act of 1920 and finds an alien to be "undesirable," when there is no evidence to sustain that conclusion, the courts are open and will afford relief. This record, however, presents no such case.

We respectfully submit that the judgment of the District Court should be affirmed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

GEORGE ROSS HULL,
Special Assistant to The Attorney General.

JANUARY, 1924.

MAHLER ET AL. *v.* EBY, INSPECTOR IN CHARGE IMMIGRATION SERVICE, U. S. DEPARTMENT OF LABOR, AT CHICAGO, ILLINOIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 184. Argued January 24, 25, 1924.—Decided February 18, 1924.

1. The inhibition of *ex post facto* laws, (Const. Art. I, § 9) applies only to criminal laws, and not to a law for deporting aliens who by conviction of crime are shown to be undesirable as residents of this country. P. 39.
2. The deportation thus provided is not punishment. *Id.*
3. Repeal of the law under which an alien was convicted does not do away with the conviction as a basis of subsequent deportation. *Id.*
4. The Alien Act of May 10, 1920, establishes classes of persons who in the judgment of Congress are eligible for deportation and directs the Secretary of Labor to deport those, of these classes, whom he finds to be undesirable residents. *Held* not invalid as a delegation of legislative power, since the discretion delegated is sufficiently defined by the policy of Congress and the common understanding as to what "undesirable residents" are. P. 40.
5. Greater precision is required of statutes defining and punishing crimes (*Cohen Grocery Co. Case*, 255 U. S. 81) than of those

delegating legislative power to executive boards and officers. P. 41.

6. In deportation proceedings pursuant to the Alien Act of May 10, 1920, against aliens found to have been convicted under the Espionage and Selective Draft Acts, the convictions are sufficient evidence *per se* that the respondents are "undesirable residents." P. 42.
7. Failure of aliens to answer questions, under advice of counsel, *held* also to warrant inferences by the Secretary of Labor against their desirability. *Id.*
8. Under the above Act of 1920, a finding by the Secretary of Labor that an alien is an undesirable resident, is a jurisdictional prerequisite to deportation. P. 43.
9. The finding must appear in the warrant of deportation itself, or the warrant is void, and the finding cannot be inferred from recitals of the warrant that the alien "has been found" in the United States in violation of the Deportation Act, and has been finally convicted of the offenses named in that act. P. 43.
10. It is a general principle that, where a finding of fact is a condition precedent to an act of an executive officer exercising delegated legislative power, the record of his act must show that the finding was made. P. 44. *Wichita R. R. & Light Co.* v. *Public Utilities Comm.*, 260 U. S. 48.
11. This Court, on an appeal, can notice and rectify a plain and serious error in a *habeas corpus* proceeding, though unassigned. P. 45.
12. Where a warrant for deportation, issued under the Act of May 10, 1920, is jurisdictionally defective in not reciting that the alien had been found an undesirable resident, his discharge in *habeas corpus* may be delayed, under Rev. Stats., § 761, for a reasonable time, to give opportunity for the Secretary of Labor to make the finding, if justified, from evidence in the original, or in a new, deportation proceeding, and to issue a new warrant accordingly. P. 46.

Reversed.

THIS is an appeal from a judgment of the District Court of the United States for Northern Illinois, dismissing five writs of *habeas corpus* and remanding the appellants, who are aliens, to the custody of the Immigration Inspector at Chicago for deportation, in pur-

suance to warrants issued by the Secretary of Labor. The cases were consolidated in the court below.

In 1918, all the appellants were tried and found guilty of violation of § 5 of the Selective Service Act of May 18, 1917, c. 15, 40 Stat. 76, 80, and of § 4 of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219. All but Petro Nigra were sentenced to the United States Penitentiary at Leavenworth, Kansas, for a period of five years; and Nigra was sentenced to the same place for 18 months. Upon error to the Court of Appeals these sentences were affirmed and became final.

Pending the imprisonment of appellants, the Secretary of Labor issued warrants for arrest of the appellants under the Act of May 10, 1920, c. 174, 41 Stat. 593.

They were all in the same form. That as to Mahler was as follows:

"WARRANT OF ARREST
No. 54616/151
United States of America
U. S. Department of Labor,
Washington.

"To Harry R. Landis, Inspector in Charge,
Chicago, Illinois.

"Whereas, from evidence submitted to me, it appears that the alien, Herbert Mahler, who landed unknown at the port of Seattle, Wash., on or about the 1st day of April, 1913, has been found in the United States in violation of the Act of May 10, 1920, for the following among other reasons:

"That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917,

or the amendment thereof, approved May 16, 1918, the judgment on such conviction having become final; and that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an act entitled 'An Act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May 18, 1917, or any amendment thereof or supplement thereto; the judgment on such conviction having become final.

"I, Theodore G. Risley, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law," etc.

On June 14 and 15, 1921, each appellant had a hearing before Immigrant Inspector Paul at Leavenworth, at which appellants were examined orally and the indictment, the judgments, and the opinion and judgment of the Circuit Court of Appeals were introduced in evidence. The Secretary of Labor on the records thus made and presented to him issued a warrant of deportation of each appellant in all respects, *mutatis mutandis*, like that in the case of Herbert Mahler, as follows:

"To U. S. Commissioner of Immigration, Montreal, Canada, or to any officer or employee of the U. S. Immigration Service:

"Whereas, from proofs submitted to me, after due hearing before Immigrant Inspector C. H. Paul, held at Leavenworth, Kansas, I have become satisfied that the alien Herbert Mahler, who landed at the port of Seattle, Washington, on or about the 1st day of September, 1913, has been found in the United States in violation of the Act of May 10, 1920; that he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled 'An Act to punish acts of

interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917, or the amendment thereof approved May 16, 1918, the judgment on such conviction having become final. That he is an alien who since August 1, 1914, has been convicted of a violation of or a conspiracy to violate an Act entitled 'An Act to authorize the President to increase temporarily the Military establishment of the United States, approved May 18, 1917, or any amendment thereof or supplement thereto, the judgment on such conviction having become final.

"I, E. J. Henning, Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return said alien to Canada the country whence he came, at the expense of the appropriation: 'Expenses of Regulating Immigration, 1922.'

"For so doing, this shall be your sufficient warrant.

"Witness my hand and seal this 10th day of November, 1921.

"(Signed) E. J. Henning,
"Assistant Secretary of Labor."

The Act of Congress enacted May 10, 1920, c. 174, 41 Stat. 593, provides that aliens of certain classes described in the act, in addition to those for whose expulsion authority already exists, shall, upon the warrant of the Secretary of Labor, be taken into his custody and deported in the manner provided in §§ 19 and 20 of the Immigration Act of February 5, 1917, 39 Stat. 889, "if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States." The classes include all aliens interned as enemies by the President's proclamation under Rev. Stats. § 4067, and alien convicts under the Espionage Act, the Explosives

Act, the Act restricting foreign travel, the Sabotage Act, the Selective Draft Act, the Act punishing threats against the President, the Trading with the Enemy Act, and certain sections of the Penal Code. Section 2 makes the decision of the Secretary of Labor in ordering expulsion of an alien under the act final.

The petitions for writs of *habeas corpus* charged that the warrant of deportation under which the petitioners were held were void because, at the time of the issue of the warrants, the Espionage Act and the Selective Draft Act, for convictions under which they were about to be deported, had been repealed, that the Act of May 10, 1920, under which the warrant was issued, was an *ex post facto* law, because the convictions for which they were to be deported were for acts committed before its passage, that there was no legal evidence to establish that petitioners were aliens amenable to deportation under the act, that the hearings and proceedings were without due process of law, and that for these and other reasons the commitment was void.

Counsel for the appellants in their brief and in their argument attacked the constitutionality of the Act of 1920, not only because it was an *ex post facto* law, but because it delegated legislative power to an executive officer, and because the criterion for his finding, i. e., that the persons to be deported should be "undesirable residents of the United States," was so vague and uncertain that it left the liberty of the alien to the whim and caprice of an executive officer in violation of due process required by the Fifth Amendment. They further attacked the validity of the warrants on the ground that they did not show a finding by the Secretary that the appellants were undesirable residents of the United States, a condition precedent to a legal deportation. They further alleged that, as to all the petitioners, there was no evidence to sustain such a finding if it had been made, and that, as

to Petro Nigra, there was also a fatal lack of evidence at his hearing to show that he had been convicted of the violations of the statutes charged in the warrant.

Mr. Walter Nelles, with whom *Mr. Otto Christensen* was on the brief, for appellants.

An act which is so uncertain and indefinite as not to indicate the matter or thing to which it relates, or which furnishes no standard for determining what acts, conduct or persons come within its purview is invalid: (1) Because it constitutes a delegation and surrender of legislative power to the courts or to executive officers; (2) By permitting arbitrary and unjust discrimination on the part of courts or executive officers, it violates due process of law and equal protection of the law; and, if the act be a penal statute, it is also in violation of the constitutional right to be informed of the nature and cause of the accusation.

The effect of repealing specific statutory offenses which form the basis of government proceedings under other acts is to nullify the latter legislation, for it no longer has anything to "feed upon."

A warrant of deportation must be valid upon its face and show that all the statutory requirements have been complied with.

Before any executive officer can deport any alien, the right must be clearly and explicitly conferred by act of Congress. There must be some evidence to sustain the charge upon which the warrant of deportation is based.

Mr. George Ross Hull, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for appellee.

MR. CHIEF JUSTICE TAFT, after stating the case as above, delivered the opinion of the Court.

The theory of the draftsman of the petition for the writ and of the assignment of errors was that the same

constitutional restrictions apply to an alien deportation act as to a law punishing crime. It is well settled that deportation, while it may be burdensome and severe for the alien, is not a punishment. *Fong Yue Ting* v. *United States,* 149 U. S. 698, 730; *Bugajewitz* v. *Adams,* 228 U. S. 585, 591. The right to expel aliens is a sovereign power necessary to the safety of the country and only limited by treaty obligations in respect thereto entered into with other governments. *Fong Yue Ting* v. *United States, supra.* The inhibition against the passage of an *ex post facto* law by Congress in § 9 of Article I of the Constitution applies only to criminal laws. *Calder* v. *Bull,* 3 Dall. 386; *Johannessen* v. *United States,* 225 U. S. 227, 242; and not to a deportation act like this, *Bugajewitz* v. *Adams,* 228 U. S. 585, 591. Congress by the Act of 1920 was not increasing the punishment for the crimes of which petitioners had been convicted, by requiring their deportation if found undesirable residents. It was, in the exercise of its unquestioned right, only seeking to rid the country of persons who had shown by their career that their continued presence here would not make for the safety or welfare of society. In *Hawker* v. *New York,* 170 U. S. 189, the validity of a law of New York which forbade, on penalty, any one who had been convicted of a felony from practicing medicine, was upheld as a reasonable exercise of the police power and not an increase of the punishment for the felony. The present is even a clearer case than that.

The brief for appellants insists that as the laws under which the appellants were convicted have been repealed, the fact of their conviction can not be made the basis for deportation. It was their past conviction that put them in the class of persons liable to be deported as undesirable citizens. That record for such a purpose was not affected by the repeal of the laws which they had violated and under which they had suffered punishment. The repeal

did not take the convicted persons out of the enumerated classes or take from the convictions any probative force rightly belonging to them.

Nor is the act invalid in delegating legislative power to the Secretary of Labor. The sovereign power to expel aliens is political and is vested in the political departments of the Government. Even if the executive may not exercise it without congressional authority, Congress can not exercise it effectively save through the executive. It can not, in the nature of things, designate all the persons to be excluded. It must accomplish its purpose by classification and by conferring power of selection within classes upon an executive agency. *Tiaco* v. *Forbes*, 228 U. S. 549, 557. That is what it has done here. It has established classes of persons who in its judgment constitute an eligible list for deportation, of whom the Secretary is directed to deport those he finds to be undesirable residents of this country. With the background of a declared policy of Congress to exclude aliens classified in great detail by their undesirable qualities in the Immigration Act of 1917, and in previous legislation of a similar character, we think the expression "undesirable residents of the United States" is sufficiently definite to make the delegation quite within the power of Congress. As far back as 1802 the naturalization statute of that year, c. 28, 2 Stat. 153, prescribed that no alien should be naturalized who did not appear to the court to have behaved during his residence in this country "as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same." Our history has created a common understanding of the words "undesirable residents" which gives them the quality of a recognized standard.

We do not think that the discretion vested in the Secretary under such circumstances is any more vague or

uncertain or any less defined than that exercised in deciding whether aliens are likely to become a public charge, a discretion vested in the immigration executives for half a century and never questioned. Act of August 3, 1882, c. 376, 22 Stat. 214, and Act of February 5, 1917, c. 29, 39 Stat. 874. See *Buttfield* v. *Stranahan*, 192 U. S. 470, 496.

International Harvester Co. v. *Kentucky*, 234 U. S. 216, and *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, are cited on behalf of petitioners. In those cases, statutes were held invalid for vagueness. They were both criminal cases in which the uncertain words of the statute encountered the limitation of the Fifth and Sixth Amendments. They did not inform the accused sufficiently of the nature and cause of the accusation. The rule as to a definite standard of action is not so strict in cases of the delegation of legislative power to executive boards and officers. Cases like the one before us were distinguished from the *Cohen Case* by Chief Justice White in his opinion in that case when he said (p. 92) "the cases relied upon all rested upon the conclusion that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded."

The next objection is that there was no evidence before the immigration inspector and the Secretary upon which a warrant could properly issue. A special objection of this kind is taken in the case of Petro Nigra. It is said that, in the record of the hearing of his case before the inspector, there does not appear any evidence of his conviction under the Espionage and Selective Draft Acts. It is true that the certified copies of the indictment and judgment against all the petitioners do not appear in the hearing of Nigra as shown, but there is a stipulation between the parties in another part of the record herein that such certified copies were used in the hearing of each

petitioner. It is clear that the hearing of Nigra was not properly reported and that his case is like the others.

But it is said there was no evidence in the hearings of any of them as to their being undesirable residents of the United States. There were their convictions. Those were enough to justify the Secretary in finding that they were undesirable. The statute does not expressly require additional evidence. If it did, there was here the circumstance that, after the examination of the petitioners had proceeded to a certain point of inquiry, the petitioners under the advice of counsel declined to answer further questions, an attitude from which the Secretary might well infer that what would be revealed by answers would not add to their desirability as residents. Of course the question how much additional evidence should be required must vary with the class which makes its members eligible for deportation. Alien enemies interned during war may be very good people, and their having been interned may have little bearing on their being good material for residents or citizens when peace returns; but the aliens in this case were convicted of crimes under such circumstances that the Secretary without more might find them undesirable as residents.

But the Secretary made no express finding, so far as the warrant for deportation discloses. It is contended that this renders the warrant invalid. It is answered on behalf of the appellee, that, in *habeas corpus* proceedings, the prisoner is not to be discharged for defects in the original arrest or commitment, because the object of the proceeding is not like an action to recover damages for an unlawful arrest or commitment, but is to ascertain whether the prisoner can lawfully be detained in custody, citing *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 662. What that case really decided was that, even if the arrest was unjustified by the warrant or commitment on its face, yet if the evidence on the hearing of the petition for *habeas*

corpus showed either that facts existed at the time of the arrest or had occurred since, which made the detention legal, the court would not release the prisoner but would do what justice required and would dispose of the prisoner accordingly. *Iasigi* v. *Van De Carr*, 166 U. S. 391; *Stallings* v. *Splain*, 253 U. S. 339, 343; *Bilokumsky* v. *Tod*, 263 U. S. 149, 158; *Mensevich* v. *Tod*, decided this day, *post*, 134.

In the case before us the defect in the warrants of deportation has not been supplied. The defect is jurisdictional. There is no authority given to the Secretary to deport except upon his finding after a hearing that the petitioners were undesirable residents. There is no evidence that he made such a finding except what is found in the warrant of deportation. The warrants recite that upon the evidence the Secretary has become satisfied that the petitioner aliens have been found in the United States in violation of the Act of May 10, 1920, and that they were finally convicted of the offenses named in the act. They could not have been found in the United States in violation of the Act of 1920 until after the Secretary had found that they were undesirable residents. Appellee's argument is that, therefore, this must be taken to mean that he finds them undesirable citizens. But the words "have been found" naturally refer to a time when the warrant of arrest was served on them, and before he had them before him. They exclude a possible meaning that he was then making their stay in the country illegal by implication of a finding that they were undesirable. This conclusion is borne out by the language of the Secretary in the warrant of arrest which before the hearings he issued against the petitioners and in which he directed their arrest on the ground that they had been found in the United States in violation of the Act of May 10, 1920. It would clearly appear from these two documents, which are naturally to be construed *in pari materia*, that the

Secretary did not deem his finding that the petitioners were undesirable citizens essential to enable him to deport them. Indeed, he seems to have used forms applicable to aliens of a fixed excluded class to be deported on identification with the class, without any further finding by him. The natural construction of his language is that he has become satisfied that they are in the country in violation of the act, solely because they have been convicted as stated.

Does this omission invalidate the warrant? The finding is made a condition precedent to deportation by the statute. It is essential that, where an executive is exercising delegated legislative power, he should substantially comply with all the statutory requirements in its exercise and that, if his making a finding is a condition precedent to this act, the fulfillment of that condition should appear in the record of the act. In *Wichita R. R. & Light Co.* v. *Public Utilities Commission*, 260 U. S. 48, a statute of a State required that a public utility commission should find existing rates to be unreasonable before reducing them, but there was no specific requirement that the order should contain the finding. We held that the order in that case made after a hearing and ordering a reduction was void for lack of the express finding in the order. We put this conclusion not only on the language of the statute but also on general principles of constitutional government. After pointing out the necessity for such delegation of certain legislative power to executive agencies we said (p. 59):

"In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to

give validity to its action. When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective.

"It is pressed on us that the lack of an express finding may be supplied by implication and by reference to the averments of the petition invoking the action of the Commission. We can not agree to this."

If the principle thus stated is to be consistently adhered to, it is difficult in any view to give validity to the warrants of deportation before us.

It is said that no exception was taken to the warrant on this account until the filing of the brief of counsel in this Court. There was an averment that the warrant was void without definite reasons in the petition of *habeas corpus*. There was nothing of the kind in the assignment of error. But we may under our rules notice a plain and serious error though unassigned. Rules 21, § 4, and 35, § 1, 222 U. S., Appendix, pp. 27, 37; *Wiborg* v. *United States*, 163 U. S. 632, 658; *Clyatt* v. *United States*, 197 U. S. 207, 221-222; *Crawford* v. *United States*, 212 U. S. 183, 194; *Weems* v. *United States*, 217 U. S. 349, 362. The character of the defect is such that we can not relieve ourselves from its consideration. The warrant lacks the finding required by the statute and such a fundamental defect we should notice. It goes to the existence of the power on which the proceeding rests. It is suggested that if the objection had been made earlier it might have been quickly remedied. There was no chance for objection afforded the petitioners until, after the warrant issued, in the petition for *habeas corpus*. The defect may still be remedied on the objection made in this Court.

We need not discharge the petitioners at once because of the defective warrant. By § 761 of the Revised Statutes, the duty of the court or judge in *habeas corpus* proceedings is prescribed as follows:

"The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

Under this section, this Court has often delayed the discharge of the petitioner for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, that defects which render discharge necessary may be corrected. *In re Bonner,* 151 U. S. 242, 261; *Medley, Petitioner,* 134 U. S. 160, 174; *Coleman* v. *Tennessee,* 97 U. S. 509; *United States* v. *McBratney,* 104 U. S. 621, 624; *Bryant* v. *United States,* 214 Fed. 51, 53. The same rule should be applied in *habeas corpus* proceedings to test the legality of confinement under the decision of an administrative tribunal like the Secretary of Labor in deportation cases. No time limitation is imposed upon proceedings under the Act of May 10, 1920. If upon the evidence the Secretary finds that these petitioners are undesirable residents and issues warrants of deportation reciting that finding with the other jurisdictional facts, there will then be no reason, so far as this record discloses, why they should not be deported.

Accordingly, the judgment of the District Court is reversed with directions not to discharge the petitioners until the Secretary of Labor shall have reasonable time in which to correct and perfect his finding on the evidence produced at the original hearing, if he finds it adequate, or to initiate another proceeding against them.

Reversed.